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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 498)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 195

JAMES RUTKIN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JULY 18, 1951.

CERTIORARI GRANTED OCTOBER 8, 1951.

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Docket Entries

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Cr. 134-50

UNITED STATES OF AMERICA,

vs.

JAMES RUTKIN.

Mar. 21, 1950—Indictment for wilfully attempting to defeat and evade income tax owing to the United States of America filed March 14, 1950.

Mar. 21, 1950—Notice of Allocation filed. (Newark).

Mar. 21, 1950—Plea—Not Guilty. (Fake) (March 20, 1950).

Mar. 21, 1950—Motion to fix bail at $25,000. Ordered bail of $25,000 fixed. (Fake).

Mar. 21, 1950—Ordered clerk can accept bail. (Fake) (March 20, 1950).

Mar. 21, 1950—Motion to reduce bail. Ordered bail reduced to $15,000. (Fake) (March 20, 1950).

Mar. 27, 1950—Transcript of plea filed.

Apr. 17, 1950—Motion for bill of particulars, notice returnable April 21st and acknowledgment of service filed May 14, 1950.

Apr. 17, 1950—Motion for dismissal of indictment and acknowledgment of service filed May 14, 1950.

Docket Entries

Apr. 17, 1950—Notice of motion for particulars of evidence presented to Grand Jury returnable April 21st and acknowledgment of service filed May 14, 1950.

Sept. 19, 1950—Hearing on motion for bill of particulars; and for dismissal of indictment. (September 18, 1950).
Ordered US Attorney furnish particulars as to demands 1, 2, 3, 7 and 8; and denied as to demands 4, 5, 6 and 9. Order to be submitted.
Ordered motion for dismissal of indictment, denied.
Ordered motion for particulars of evidence presented to Grand Jury Denied. (Meaney) (September 18, 1950).

Sept. 29, 1950—Order granting in part and denying in part motion for bill of particulars filed. (Meaney).

Sept. 29, 1950—Order denying motion to dismiss indictment filed. (Meaney).

Oct. 3, 1950—Notice of motion to require production of records at trial filed October 2, 1950.

Oct. 3, 1950—Notice of motion to permit defendant to copy tax returns filed October 2, 1950.

Oct. 3, 1950—Hearing on motion to permit defendant to copy tax returns. Ordered motion denied. (Meaney) (October 2, 1950).

Oct. 3, 1950—Hearing on motion to require production of records at trial. Ordered motion denied. (Meaney) (October 2, 1950).

Oct. 9, 1950—Order denying motion to permit defendant to copy tax returns filed. (Meaney).

Oct. 9, 1950—Order denying motion to require production of records at trial filed. (Meaney).

Docket Entries

Oct. 11; 1950—Trial with jury before Hon. Thomas F. Meaney. (October 10, 1950).

Oct. 16, 1950—Trial continued. (October 11, 1950).

Oct. 16, 1950—Trial continued. (October 13, 1950).

Oct. 17, 1950—Trial continued. (October 16, 1950). Motion for judgment of acquittal denied.

Oct. 18, 1950—Trial continued. (October 17, 1950).

Oct. 19, 1950—Trial continued. (October 18, 1950). Application for warrant of arrest of Samuel Lentz, witness granted. (See Cr. 432-50).

Oct. 19, 1950—Warrant of arrest for witness Samuel Lentz issued October 18, 1950. (See Cr. 432-50).

Oct. 20, 1950—Trial continued. (October 19, 1950).

Oct. 23, 1950—Trial continued. (October 20, 1950). Motion for judgment of acquittal denied.

Oct. 25, 1950—Trial continued. (October 23, 1950). Verdict: Guilty.

Oct. 30, 1950—Ordered motions for judgment of acquittal or for new trial and for arrest of judgment denied. (Meaney) (October 27, 1950).

Oct. 30, 1950—Sentence: Four years and fine of $10,000.00. Defendant to stand committed until fine is paid. (Meaney) (October 27, 1950).

Oct. 30, 1950—Ordered motion for fixing bail pending appeal; motion to continue defendant on bail for two weeks denied. (Meaney) (October 27, 1950).

Oct. 30, 1950—Ordered application that defendant be held in this jurisdiction pending application for bail granted. (Meaney) (October 27, 1950).

Docket Entries

Oct. 30, 1950—Judgment and commitment filed. (Meaney).

Oct. 30, 1950—Notice of Appeal filed October 27, 1950.

Oct. 30, 1950—Copies of notice of appeal sent to U. S. Attorney and Clerk, U. S. C. A.

Oct. 31, 1950—Hearing on application why Samuel Lentz, material witness should not be held in contempt of Court. (October 27, 1950). (See Cr. 432-50).
Respondent—Plea—Not Guilty.
Motion for dismissal. Decision reserved.
Motion for acquittal. Decision reserved.
Samuel Lentz—released in custody of counsel.

Oct. 31, 1950—Certified copy of order admitting defendant to bail pending appeal filed October 30, 1950. (Biggs).

Oct. 31, 1950—$10,000.00 deposited in Registry. (October 30, 1950).

Oct. 31, 1950—Warrant for arrest of witness Samuel Lentz returned executed filed. (See Cr. 432-50).

Oct. 31, 1950—Order for release of exhibit filed. (Meaney).

Nov. 2, 1950—Ordered application for leave to defendant to visit in Florida denied. (Meaney).
Ordered counsel to apply to Circuit Court. (Meaney).

Nov. 9, 1950—Transcript of trial filed November 8, 1950. (3 volumes).

Nov. 10, 1950—Transcript of sentence filed.

Nov. 15, 1950—Hearing on motion for leave to amend trial record. Ordered motion denied. (Meaney) (November 14, 1950).

Indictment

In the

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

Ind. 134-50

THE UNITED STATES OF AMERICA,

vs.

JAMES RUTKIN, alias Abe Rutkin,

Defendant.

The Grand Jury in and for the District of New Jersey Sitting at Newark Presents:

That on or about the 15th day of March, 1944 in the District of New Jersey, and within the jurisdiction of this court, James Rutkin, alias Abe Rutkin of Newark, New Jersey, who during the calendar year 1943 was married and had two dependents, did willfully and knowingly attempt to defeat and evade a large part of the income tax and victory tax due and owing by him to the U. S. of America for the calendar year 1943, by filing and causing to be filed with the Collector of Internal Revenue for the Fifth Internal Revenue Collection District of New Jersey at Newark, a false and fraudulent income and victory tax return wherein he stated that his net income for said calendar year was the sum of $18,966.64, and that the amount of income and victory tax due and owing thereon was the sum of $6843.93.

Whereas, as he then and there well knew his net income for the said calendar year was the sum of $268,622.04, derived as follows:

Gross Income:		
Net gained from capital assets		$18,966.64
Other income		250,000.00
Total income		$268,966.64
Deductions:		
Contributions	200.00	
Interest	19.60	
Taxes	125.00	
Total Deductions	344.60	
Net Income		$268,622.04

Upon which said net income he owed to the United States of America an income and victory tax of $222,408.32. Title 26, U. S. Code, Section 145b.

Excerpts From Testimony

Newark, New Jersey, Tuesday,
October 10, et seq. 1950.

Before:

The Honorable THOMAS F. MEANEY,
U. S. D. J. and a Jury.

Appearances:

ALFRED E. MODARELLI, Esq., United States Attorney, and CHARLES J. TYNE, Esq., Assistant United States Attorney, MEYER ROTHWACKS, Special Assistant to the Attorney General, for the Government.

SIDNEY SIMANDL, Esq., and
JACK COHEN, Esq.,
Attorneys for Defendant;

WALTER B. VAN RIPER, Esq., of Counsel.

* * *

*(4) (The Jury was duly sworn.)

The Court: All right; you may now swear the alternates.

(Two alternate jurors were duly sworn.)

The Court: All right, you may be seated.
Mr. Tyne, you may proceed.

(Mr. Tyne made his opening statement to the Jury.)

(Mr. Van Riper made his opening statement to the Jury on behalf of the defendant.)

Mr. Tyne: Mr. Stanton.

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* Figures in parentheses indicate the original page numbers of the typewritten transcript.

EARLE W. STANTON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Mr. Van Riper: If the Court please, may I address Mr. Tyne, with the permission of the Court? If this is (5) for the purpose, as I assume it is, proving the return, we shall be glad to admit it.

Mr. Tyne: Well, sir, that's what it is for, for the purpose of proving—

Mr. Van Riper: Knowing Mr. Stanton, I assumed that was the purpose of calling him.

Mr. Tyne: Yes, that's right.

Mr. Van Riper: I would like to see it, of course.

Mr. Tyne: Oh, sure. (Tendering.)

The Court: Just a minute.

Mr. Van Riper: That's admitted as Rutkin's original signature on the return which he filed for—1943, I suppose; I haven't looked at it.

The Court: All right; it is admitted on the record that the exhibit, which will be marked G-1, is admitted by the defendant through counsel to be the return made by him for the—

Mr. Tyne: Calendar year—

The Court: —calendar year 1943.

Mr. Tyne: And—

The Court: And filed with the Collector of Internal Revenue at Newark, New Jersey.

Mr. Tyne: On March 15, 1943.

The Court: All right; on March 15, 1943.

The Clerk: The Exhibit is marked G-1 in evidence.

(6) (Received and marked Exhibit G-1.)

Mr. Tyne: And may I ask also if it is conceded—

A Voice: That was March 15, 1944.

Mr. Tyne: Oh, yes. I will correct that. March 15, 1944.

The Court: 1944 it was filed.

Mr. Tyne: Yes.

The Court: But it is for the year 1943.

Mr. Tyne: Yes, sir, that's right.

I also want to ask counsel if he will concede that this tax as stated in the return was paid, in the amount of—

The Court: $6,843.93, is it?

The Witness: $1,371.42.

The Court: How much?

The Witness: $1,371.42.

Mr. Tyne: That was the amount that was paid with the return. Is that right?

The Witness: No. This (indicating) is the amount that was paid with the return—

The Court: The total amount paid?

The Witness: The total amount, $1,371.42.

The Court: That's for the year 1943?

The Witness: '43, '43—

The Court: What was the total net income stated in that return?

(7) Mr. Tyne: May we put him on the stand, sir, and have him testify?

The Court: Yes, you had better put him on the stand.

(8) The Court: What was the total net income stated on that return for James Rutkin for the year 1943?

The Witness: The total net income?

The Court: Total net income.

The Witness: The total net income and Victory Tax was $6,843.

The Court: No, the total net income for the calendar year. Isn't that on the first page?

The Witness: $18,622.04.

The Court: How much? $18,622.04?

The Witness: $18,622.04.

The Court: Isn't that it (indicating on income tax form)? The total taxable net income was how much?

The Witness: $18,622.04.

The Court: And the total tax due?

The Witness: Was $6,843.93.

The Court: And how much was paid on that?

The Witness: The full amount was paid.

The Court: The full amount was paid?

The Witness: Yes, with a credit from a payment in 1942; it was split that year.

Direct examination by Mr. Tyne:

Q. There was a split in the payment of the tax in 1942 and '43? A. Yes.

(9) The Court: Will you repeat to me what he said was the total taxable net income?

The Reporter: $18,622.04.

The Court: Right. All right. Anything further from this witness?

Mr. Tyne: Yes. I would like to ask him a couple of questions.

Q. Can you tell us, from looking at that return, from what the income was derived? A. Capital net gain.

Q. Does it show any income from salaries, wages and the like of that? A. It does not, only on—

Q. The sole income is from capital gain, is that right? A. That's right.

Q. And there was an assessment tax? A. Yes, sir.

Q. And this is a certificate of assessment tax? A. That's right.

Mr. Tyne: I guess that is all, if the Court please.

Mr. Van Riper: That's all, no questions.

Mr. Tyne: Has this been marked?

The Clerk: Yes, I marked that as Exhibit G-1 in evidence.

Mr. Tyne: Yes. Mr. Reinfeld.

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(10) JOSEPH H. REINFELD, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. Tyne:

Q. Mr. Reinfeld, where do you live? A. I live in New York at 301 Park Avenue.

Q. At the Waldorf Astoria Hotel, is that so? A. Yes.

Q. Are you married? A. I am married.

Q. You live there with your wife? A. I do.

Q. What business are you in? A. I am in the whiskey business, importing of whiskey.

Q. What is the name of your importing company? A. Reinfeld Importers, Limited.

Q. How long have you been in that business? A. Since 1946.

Q. And what position do you hold with that company, in what capacity are you engaged with that company? A. President.

Q. President? A. Yes.

Q. And are you in any other business in New Jersey or elsewhere? A. I have a real estate company in New Jersey.

(11) Q. What is the name of that? A. Washington Holding Company. I have a wholesale business here under the name of Joseph H. Reinfeld, Inc.

Q. The main office and warehouse are situated on Frelinghuysen Avenue, Newark? A. One office is on Frelinghuysen Avenue, Newark, and one on Broad Street, 1060 Broad.

Q. How long have you been interested in that business? A. Since 1934, in the Joseph H. Reinfeld.

Q. In the Joseph H. Reinfeld? A. Joseph H. Reinfeld.

Q. Joseph H. Reinfeld and this company which you refer to as the Renfield Importing Company is named after a relative of yours, is it not? A. After my son-in-law.

Q. And what is his full name? A. Harold L. Renfield.

Q. And he is associated with you in that business, is he not? A. Yes.

Q. Is any other member of your family or relative associated with you in this Joseph H. Reinfeld Company in Newark? A. Yes, my brother and my brother-in-law.

Q. And are they a stock corporation? (12) A. They are.

Q. Do you know the defendant in this case? A. Yes, sir.

Q. James Rutkin? A. Yes, sir.

Q. How long have you know him? A. Well, somewheres around 1923 or 24.

Q. In or about 1926 did you engage in any enterprise? A. I did.

Q. What kind of an enterprise was it? A. I was engaged in St. Pierre Miquelon.

The Court: As I recall it there are a couple of little islands up in the Bay of St. Lawrence.

Q. What was the nature of that enterprise, Mr. Reinfeld? A. We had a company by the name of P. R. Chartier, and we brought liquor from Scotland, France and wine from different parts of the world and we were selling it to whoever came to buy.

Q. You had boats and ships and the like of that, did you not? A. No.

Q. You did not. How long did you continue in that particular enterprise? A. Until the finish, till about '32.

Q. Was the defendant Rutkin ever interested or connected (13) with that business in any way? A. No, sir.

Q. Did you engage in any enterprise in about the year 1926? A. I did.

Q. And how do you refer to that? A. That is what we used to call a "High seas venture", business on the high seas.

Q. Tell us what that means? A. It means that you put a boat out there beyond the 12-mile limit and different people come and buy whiskey. We only sold it to boats with foreign registration.

Q. Did anyone become associated with you when you organized this particular enterprise in '26? A. Yes.

Q. Who were they? A. Mr. Kanengiser, Mr. Facherr, Mr. Schneider, Mr. Lentz.

Q. Is that all? A. That's all.

Q. Did that enterprise continue with those individuals over a period of time? A. Yes.

Q. For how long? A. Well, they were with us until '32.

Q. Now, during this period between 1926 and 1932 did (14) anyone else come into this enterprise? A. I am sorry I must correct one thing. There was a Mr. Handler in it in 1926.

Q. In addition to those you have already mentioned? A. In addition to those.

Q. Now, in addition to those men, including Mr. Handler, did anyone else come into this enterprise before termination or liquidation? A. In 1929.

Q. Who came in at that time? A. Mr. Rutkin.

Q. Will you tell us how and under what circumstances he came into this enterprise of yours—it was a partnership, I assume? A. I wouldn't call it exactly like that.

Q. What would you call it?

The Court: Not what you call it; what was the arrangement?

The Witness: Well, the arrangement was that he got a part of the profit.

Q. That is, he was one of the individuals who were associated with you since 1926? A. The only reason I say that is because he didn't put any money up.

Q. I am coming to that. It was a partnership among (15) the individuals you have already mentioned, isn't that so? A. Yes.

Q. Now, you say in 1926 Rutkin came into this enterprise, is that right, the defendant? A. Yes.

Q. Will you tell us how and under what circumstances he came in? A. Well, he spoke to some of the—I think the first one he spoke to was Mr. Kanengiser and he mentioned this to me and there was quite a talk about it and I guess it went on for a couple of months and we decided to take him in.

Q. How did he come in? Did he put any money in it, did he do anything or what? A. He didn't put in any.

The Court: What did he do, what were the terms of his association?

(16) A. Well, he just wanted to be a partner and we took him in.

Q. Well, why did you—strike that out. Did he put any money in this enterprise? A. No, sir.

Q. Sure of that? A. Positive.

Q. Why did you take him in? A. Well, we were afraid that we will get some interference and trouble.

The Court: From whom?

The Witness: From Mr. Rutkin.

Q. Is that the reason why you took him in? A. Yes.
Q. What was his reputation at that time?

Mr. Van Riper: Oh, if your Honor please—
The Court: Sustain the objection.
Mr. Tyne: All right.

Q. How long did the defendant continue in this enterprise? A. Till '33.

The Court: Did you have any discussions with Rutkin at any time as to the nature of his association with you and your partners?

The Witness: Oh, yes.

The Court: What was the nature of the discussion with him?

(17) The Witness: Well, we became very friendly.

The Court: I know, but what I am trying to get at is, did you have any discussion with him as to what his part in this business was, or what he was to do or how he came to come in it?

The Witness: Well—

The Court: You said you were afraid he would interfere with you.

The Witness: Well, there was hardly anything to do for him.

The Court: Well, what discussions did you have with him, if any, concerning his association with you and your partners?

The Witness: Well, there was nothing special to discuss about it. The man wanted to come in—

The Court: Did you take anybody else in just because they wanted to come in, and give them a share of the profits?

The Witness: No, sir, we didn't.

The Court: Well, why did you take him in?

The Witness: Because we were afraid of him.

The Court: How? Did you have any discussion with him?

The Witness: No.

The Court: You just got afraid of him and took him (18) in, is that it?

The Witness: Well, I said it was a couple of months before we made up our mind to take him.

Q. Well, tell us about the approaches that were made before you took him in? A. Well, he said he wants to come in and we thought it the best thing to take him in because—

The Court: Well, why did he say he wanted to come in?

The Witness: Well, he wants to make some money.

The Court: Well, did you let anybody come in that wanted to make money, come into this association?

The Witness: Well, in those days if you were worried about somebody that might do you harm, you took him in.

The Court: Did he tell you anything about what—

The Witness: No.

The Court: —he intended to do?

The Witness: No. He—

The Court: He just wanted to come in?

The Witness: He just wanted to come in.

The Court: And you took him in?

The Witness: Right.

Q. Well, did you talk it over with Kanengiser or anybody else before he came? A. We all spoke about it.

(19) Q. What? A. We all spoke about it.

Q. When you say "we all"— A. Kanengiser, Popik, all of them, the partners, Stamler.

The Court: But you didn't talk it over with Rutkin?

The Witness: Yes, he was in, he was talked about, he came into the office later, after we put him to be a partner.

The Court: I mean when you were considering taking him in, did you have any discussions with Rutkin?

The Witness: Yes, we talked about the business we had and what we were going to do.

The Court: Well, did he tell you what he was going to do?

The Witness: Well, Mr. Rutkin was interested in other businesses, too, and he is the kind of man that doesn't stay in an office or would like to do anything.

The Court: No, no, I am not concerned with that. What I am trying to get at is, why you, who had this very profitable business, decided to take Rutkin, who invested no money, into that business.

The Witness: Well, in those days and in the business that we were engaged, we were not the only people that took in his type of man but others did, too. If we didn't take him in, we would have probably encountered some (20) trouble.

The Court: Did he tell you that?

The Witness: No, sir, but we felt that that's what it means.

The Court: All right, go ahead, Mr. Tyne.

Q. Now, can you tell us just what he said, at the time he wanted to get into the business? A. Well,—

Q. Did he make a demand upon you or what was said by him? A. No, he said that—well, to be very plain, that he wil protect things and so on.

Q. He would protect things and so on? A. Yes.

Q. And you took him in? A. That's right.

Q. You testified that he put no money in the enterprise? A. He did not.

Q. Now, this particular enterprise continued until when? A. Early '33.

The Court: Well, on what terms did you take Rutkin in for this protection business?

The Witness: Three percent.

The Court: Three percent?

The Witness: Right.

The Court: Is that of what you—

(20-A) The Witness: Of what the profits were.

The Court: Three percent of your profits?

The Witness: Yes.

Q. All right. Now, during this period did Rutkin take any profits out of this enterprise? A. Yes.

Q. How often? A. Well, whenever there was a split of profits.

(21) Q. Now, at some subsequent time was his percentage increased? A. Yes.

Q. How? A. Well, when Mr. Handler quit, I would say a few months later, and he had 3% and the 3% was given to Mr. Rutkin.

Q. Can you tell us the circumstances under which Handler quit? A. Well, he walked in one day, in the office, and he just said he was going to quit because he had some arguments with Rutkin and he is afraid.

Q. So he quit? A. Yes, sir.

Q. And Rutkin got Handler's share, an additional 3%? A. Yes, sir.

The Court: How did he get that share?
The Witness: He gave it.
The Court: Just volunteered?
The Witness: Yes, sir.
The Court: All right.

Q. Now, he contiued to get that until the termination of the enterprise, until when, 1932 or '33? A. Well, in 1930 another group came in.

Q. All right. Tell us about that. A. Well, another group came in.

(22) Q. And this is after Handler dropped out I assume, is that right? A. Well, there was other parties before, but another group came in which we called the Seaman and Davis group.

Q. All right. How many did they comprise? A. About ten partners, I imagine, in that group. And we gave them 50%.

The Court: 50%.
The Witness: Yes.
The Court: Who were they?
The Witness: They were Mr. Seaman, Mr. Joseph Davis, Mr. Harry Davis, Mr. Zwillman, Mr. Stacher—
The Court: Abner Zwillman?
The Witness: Yes.
The Court: Who else?
The Witness: Stacher.
The Court: Stacher?

A. (Continuing) Mr. Krieger—

The Court: Which Krieger?
The Witness: Well, he passed away, I don't remember his first name.

A. (Continuing) —and there were a couple of people from Canada which I don't remember their names.

The Court: Well, did they bring new money into it?

The Witness: Yes.

(23) The Court: All right.

By Mr. Tyne:

Q. All right. That group represented 50% of the interest in this enterprise, and this other group that you mentioned represented the other 50%, is that right? A. Well, we are talking about groups.

Q. Yes, we are talking about groups. A. There were three groups, the Kanengiser group, there was the Seaman-Davis group and the Reinfeld group.

The Court: The Reinfeld and the Kanengiser group were together before the Seaman-Davis group got in, is that so?

The Witness: But I would call it two groups at that time because the Kanengisers were other parties joined with us.

The Court: Kanengiser and Reinfeld groups joined.

The Witness: That's right, in '26.

The Court: So that by the time Seaman and Davis joined there was just the two groups?

The Witness: Right, sir.

The Court: The Reinfeld-Kanengiser group and the Seaman-Davis group?

The Witness: Right, sir.

The Court: And each of them had 50%, is that right?

The Witness: When the Davis group came in, then we (24) split it 50-50%.

The Court: 50% for the—

The Witness: Davis-Seaman group.

The Court: And 50% for the Reinfeld-Kanengiser group.

The Witness: Right, sir.

Q. Can you tell us how much money the Seaman-Davis group contributed to the enterprise? A. I couldn't remember what it was.

The Court: Approximately?

Q. Approximately. A. Whatever we had, they contributed an equal share.

The Court: Well, approximately what was it?

The Witness: It might have been two or three hundred thousand dollars.

Q. Yes. Now, this enterprise, consisting of these two groups, was liquidated when? A. In early '33, complete liquidation; we started late in '32 and in '33 it was completely liquidated.

Q. All right. Now, was there distribution made of any of the proceeds of the enterprise at that time? A. No; there was some distribution made, not very big.

Q. All right. Well, was there an accounting of what each— A. An accounting.

Q. There was an accounting? (25) A. Yes.

Q. And each individual comprising this enterprise, both groups were told what his interest was, is that so? A. Yes, sir.

Q. Now, was Rutkin in it at that time? A. Yes.

Q. Will you tell us what his interest was, if any? A. Well, his interest at that time was 6%.

Q. All right. Now, when it was terminated, liquidated, did he receive any of the proceeds?

The Court: Wait just a moment. Was that 6% of the total or was it 6% of the Reinfeld-Kanengiser group?

The Witness: 6% of the whole.

The Court: Of the total.

Q. Now, was there any payment—

The Court: That is up to the time of this final analysis of what each one got, he still put no money in it, is that right?

The Witness: That's right.

The Court: But he was given 6% interest??

The Witness: Yes, sir.

The Court: All right.

Q. Now, was there a distribution of—strike it out. You say there was an accounting of what each one had in interest, is that right? (26) A. Yes, what the company was worth.

Q. Now, there was an accounting percentagewise; was there an accounting dollarwise as to what each partner had? A. Yes.

Q. All right. Can you tell us what Rutkin's share of the proceeds were at that time, after that accounting? A. There wasn't anything coming to him.

Q. There wasn't anything coming to him? A. No, sir.

Q. What was his condition with respect to the accounting? A. He was overdrawn.

Q. To what extent? A. $35,000.

Q. Was that brought to his attention? A. It was.

Q. How? A. Well, Kanengiser told me that he is overdrawn $35,000.

Mr. Van Riper: Well, now, if your Honor please, now I move to strike out the answer, that he was overdrawn $35,000, if it was dependent upon what someone told him.

The Court: We will strike out what Kanengiser told him.

Did you have any discussion with Rutkin?

The Witness: Kanengiser was the cashier.

The Court: Wait a minute. Just answer my question.

(27) The Witness: Yes, sir, I did.

The Court: Did you have any discussion with Rutkin?

The Witness: I did.

The Court: Did you tell Rutkin anything about being overdrawn?

The Witness: I did.

The Court: What did you tell him?

The Witness: I told him I was overdrawn $35,000.

The Court: And what did he say?

The Witness: To be correct, I misunderstood and thought that it was $50,000, but Rutkin proved it was only thirty-five.

The Court: Rutkin proved to you it was only $35,000 overdrawn?

The Witness: Yes.

Q. You say Kanengiser took care of the books? A. Yes, sir.

Q. And prepared the accounting? A. Yes, sir.

Q. And it was submitted to each individual? A. Yes, sir.

Q. Now, do you know whether or not a slip of paper was given to Rutkin showing that he was overdrawn

$35,000 at the termination of this enterprise? (28) A. That was later on.

Q. Later on.

(Whereupon a short recess was taken.)

(29) Q. Now, Mr. Reinfeld, before the termination of this partnership, did Mr. Rutkin make any trips with you to Canada or elsewhere? A. Well, he did take a few trips with me, I think two or three trips.

Q. Who defrayed the cost of those trips, or expenses? A. Mr. Kanengiser.

Q. When this enterprise was terminated in '33 or '32, you said there was an accountant and that certain of the monies were retained, is that right? A. Yes.

Q. Who was the bookkeeper or cashier of this group? A. Mr. Kanengiser.

Q. Did he receive all of the money? A. Yes.

Q. And maintain whatever books and records were kept and maintained at that time? A. Yes.

Q. Did you handle any of the money? A. No, sir.

Q. What happened to the monies that were in Mr. Kanengiser's hands at the termination of this enterprise? A. I think it was in October '33 we organized the Browne Vintners Company.

Q. When you say "we organized," whom do you mean?

(30) A. The Kanengiser group, the Davis Seaman group and the Reinfeld group.

Q. Was Rutkin one of the group who organized the Browne Vintners Company? A. No, sir.

Q. Continue. Then you said that in 1933 you organized the Browne Vintners. What happened? A. And there was $250,000 left in the treasury.

Q. In whose hands? A. Mr. Kanengiser.

Q. What happened to that money? A. We sent it to Canada to a Mr. Bower, wh. was the nominee.

Q. Was that money subsequently returned to the United States? A. It was returned to Browne Vintners.

Q. And deposited in Browne Vintners' account? A. Yes.

Q. Where? A. I don't remember the bank; it was downtown, but I couldn't mention the name.

Q. Had the Browne Vintners Company been organized at that time? A. Yes.

Q. Was that a stock corporation? A. Yes.

Q. Was the stock issued to any of the individuals with whom (31) you were associated? A. The stock was issued to the nominee.

Q. To the nominee; and who was the nominee? A. Mr. Bowers.

Q. That was the Mr. Bowers in Canada; is that right? A. Yes, but you see when Bowers sent the money there was no stock issued at that time but some later date there was the stock issued.

Q. That was stock of Browne Vintners? A. Yes.

Q. And was that subscribed to by yourself and others? A. Yes, sir.

Q. Who were the stockholders when the company was organized? A. The real stockholders.

Q. Yes. A. Well, there was Kanengiser, Facher, Lentz, Schneider, Lou Susskind—

Q. I think he was a partner—you forgot to mention him before; isn't that right? A. Yes.

Q. Anyone else? A. Then there was the Seaman and Davis group, there was Krieger, Zwillman and Mr. Facher, and that was about all because I think the Seaman Davis group paid out their other partners before that.

(32) Q. Those you mentioned acquired all the stock that was issued in Browne Vintners about 1934 and '35?

A. No, they were the real stockholders but the nominee got the stock.

Q. That was Mr. Bowers, is that so? A. Well, by that time when the stock was issued I put money in, I got stock.

The Court: When Browne Vintners finally got

The Court: To whom was the stock issued?

The Witness: When Browne Vintners received the stock, there was already more money in it in 1935.

The Court: To whom was the stock issued

The Witness: I don't remember every stockholder.

The Court: Well, was Rutkin one of them?

The Witness: No, sir.

The Court: Was there anybody fronting for Rutkin?

The Witness: No, sir.

The Court: All right.

Q. Did Rutkin have any interest in any of the stock or any of the assets of the corporation? A. No, sir.

Q. Now, in the beginning the number of stockholders was limited; isn't that so? A. In the beginning.

Q. Who was the first president of the Browne Vintners (33) Company? A. E. T. Browne.

Q. And it was after him that the corporation was named? A. Yes, sir.

Q. And then there were subsequent presidents, isn't that so? A. Yes, sir; Joseph Newman after—he resigned after four months or five months; I don't remember.

Q. And was Mr. Owen president? A. Yes, sir.

Q. Was Mr. Newman? A. I am sure Mr. Owen succeeded Browne; and Mr. Browne succeeded Owen.

Q. And then you succeeded Mr. Newman, isn't that right? A. I succeeded Mr. Newman in 1939, I believe, or thereabouts.

Q. Now, between that period when the stock was issued of Browne Vintners in the year 1933, '35, up until 1940, was the capitalization of that corporation increased? A. Yes, a few times.

Q. And was opportunity given to the stockholders to purchase the stock that was newly issued under this recapitalization? A. Yes, sir; there was a Board of Directors meeting and everybody was told that—not told but asked whether we should increase it, and as all the directors agreed, we increased it.

(34) Q. Now, in the year 1940 were negotiations undertaken to sell Browne Vintners? A. Yes.

Q. And was it sold? A. It was.

Q. For what price? A. Seven and a half million dollars.

Q. To whom? A. To Seagrams Distilleries Company.

Q. Before the sale to the Seagrams Distilleries, or Distillers Seagrams—, isn't it?—limited? A. Distillers Seagrams, Limited.

Q. —was consummated, had negotiations been undertaken by you or anybody else to sell the company to someone else? A. Yes, I had many meetings with the president of the National Distillers, Mr. Carter; he had bought it for Seagrams but the bankers wouldn't approve the loan, because it was a sixteen million dollar transaction; Browne Vintners owed eight million at the time and they didn't think it was good business; the war was on; and the directors turned it down.

Q. Then, as I understand it, it was after extensive negotiations with other people that you finally sold the company to Distillers Seagrams, Limited? A. Yes, and negotiated with Schenley and finally we sold it to Seagrams.

(35) Q. And was there a distribution of the proceeds of the sale made at that time? A. Yes.

Q. And will you tell us how the stock was held? Was it held by the actual owners or certain of the stock held by nominees for beneficial owners? A. Yes; there was about $700,000 held by nominees and about a million, five hundred thousand some odd dollars held by actual stock holders.

Q. Yes. And there was an actual list of stockholders compiled, isn't that so? A. Yes.

Q. By the accountants? A. By the accountants.

Q. And a list of those nominees who held stock for the beneficial owners, is that right? A. Yes, everything was—

Q. Yes. A. Whoever the real stockholders was, it was marked there.

Q. Now, did Rutkin have any interest in Browne Vintners at that time? A. No, sir.

Q. Was he an actual owner of any stock? A. No, sir.

Q. Was he a beneficial owner of any stock held by (36) any nominee of Browne Vintners? A. No.

Q. In the year 1942 was there any claim made by you—against you—for additional moneys as a result of the sale of Browne Vintners, by certain individuals, Zwillman and Stacher, for example? A. Yes.

Q. And were those claims negotiated by you and representatives of yours? A. Well, it began with the same attorney that negotiated for both.

Q. And who is he? A. Mr. Kessler.

The Court: Kessler negotiated for—

The Witness: For Zwillman and myself.

The Court: Zwillman and you?

The Witness: Yes.

The Court: Zwillman was claiming against you?

The Witness: Well, it wasn't really a claim; it was something he thought that—

The Court: Well, he was asking you for money that he thought you owed him, wasn't he?

The Witness: Well, he gave it to me first. He gave me that money.

The Court: He gave you the money?

(37) The Witness: That's right.

The Court: And when—?

The Witness: And then he claimed it back.

The Court: He claimed it back.

The Witness: Yes.

The Court: And in that situation, Kessler represented both you and Zwillman?

The Witness: That's right.

Q. How much—you say he gave you money back—how much was that? A. He gave me voluntarily—

Q. Yes. A. —about $240,000.

The Court: What for?

The Witness: Well, there was a tax case against me for $240,000. The tax case started with an investigation of Zwillman. Zwillman prior to that for years took money out of the company to pay tax for some of his group; they were involved in that tax case too. He also took out money for some—

The Court: Well, was this money to pay a tax or to pay a compromise?

The Witness: To pay a compromise.

The Court: To pay a compromise with the Government?

The Witness: Yes, sir.

(38) The Court: And he took that money, you say, out of the corporation?

The Witness: Yes, sir.

The Court: All right. Now, then, as a result—

The Witness: He also took out—

The Court: As a result of the investigation of Zwillman he got it out of you.

The Witness: After the meeting, so Zwillman told me afterwards.

The Court: Yes.

The Witness: After the Government assessed me $240,000, that there were others involved, other partners involved, from the Kanengiser group, and others.

The Court: Yes.

The Witness: All together it was $400,000 the Government claimed. Zwillman told my accountant to pay it, not to have any case about it or anything, just to pay it, and that he will pay half of it. Now, the tax was $400,000. The expenses was eighty thousand and he gave me half of it. That was in 1940.

The Court: Then he wanted it back?

The Witness: Then he wanted it back and I gave it to him back.

Q. You gave it back to him. A. Yes, sir.

(39) Q. And did that giving back result from the negotiation that was carried on in the latter part of 1942 and the early part of 1943? A. Around the fall of 1942.

Q. The fall of 1942, is that right? A. Yes. I believe it was Mr. Davis that told me that Mr. Zwillman wants to see me.

Q. Yes. A. And I asked him where and he says, "Well, he will meet you at the Joseph H. Reinfeld office, or at Lou Holtz' office—home." And I happened to be closed that day at Joseph H. Reinfeld, on Saturday, and I told him I will meet him at Lou Holtz' office—home.

Q. Let me interrupt you. Did you meet him there? A. Yes. There was a series of conferences.

Q. And did you agree to settle with Stacher and Zwillman for a certain amount of money? A. Well, not the first time when I came.

Q. No, not at that time, but did you during— A. I did.

Q. At some time during these conferences? A. I did.

Q. And what did that amount to?

The Court: How did Stacher come into it?

The Witness: I don't know. I believe he is an (40) associate of Zwillman.

A. I didn't get that last question.

Q. You did finally agree to settle for a certain amount of money. A. Yes.

Q. And that was with Stacher and Zwillman. How much was that? A. $225,000.

Q. Well, I mean the overall— A. He gave me part of the expense.

Q. Now, the final sum, the final sum that you agreed to pay Zwillman and Stacher, and which was actually paid over to him on May 11, 1943, how much was that? A. $358,000.

Q. All right.

The Court: Where did the other $130,000 come from? What was that?

The Witness: That was money that the accountants still had of his that was coming to him. You see, it was not until a year later that we split up another half a million dollars which was in escrow.

Q. That represented that two hundred and fourteen or two hundred and seventeen thousand that was left? A. And two hundred and twenty-five.

Q. Two hundred and twenty-five? A. Something like that.

(41) Q. Now, going back to the year 1935—'34—did you see Rutkin at that time? A. In '34?

Q. In '34, yes. A. Oh, yes, yes.

Q. Did you see him frequently? A. Yes, quite often.

Q. And did you make any trips with him, abroad or elsewhere? A. Not in '34.

Q. What? A. Not since '32.

Q. Not since '32. In 1936 did you see Rutkin? A. Yes.

The Court: Now, let's see. When did Prohibition go out?

The Witness: '33.

The Court: '33? Then this Miquelon-St. Pierre and High Seas business died?

The Witness: That was liquidated in '32.

The Court: Liquidated in '32. All right.

Q. Now, did you see Rutkin from time to time in the period between 1934 until 1942? A. Well, I saw him, yes, yes.

Q. Now, during that period of time did you give him any
(42) financial assistance? A. In '36.

Q. Well, will you tell us what the circumstances were? A. Well, he came around and was telling me that he wants to go in business.

Q. All right. A. And there was a hotel being built in Miami, that he could get a very reasonable lease, and Jack Dempsey wanted to be his partner, and that he has talked to Jack Dempsey and he thinks he could do well there, and he asked me for $60,000; and then I wanted to know how he arrived at this money, and he just told me that he had 6% in the old company and he still had 6%. So I—

Q. He told you that he had 6% in the old company, he had still 6%? A. Still 6%, in the Browne Vintners.

Q. Even though he was $35,000 in the red? A. That's right.

Q. Liquidated? A. I said "Jim, you haven't got any money." He says "Where is my money?" I says, "Well, don't ask me. I never held your money." Mr. Kanengiser said I have always held everybody's money. "Well, I haven't got your money."

Well, then, anyway, he started telling me that he would like to do something to get away from what he has been doing.

(43) Q. Did he tell you what he was doing at that time? A. Well, he was just gambling and he would like to get into business and make a success of it, and so on and so forth; and I didn't agree with him right way and I didn't think he will make a success but I liked Jim Rutkin for many years—I want you to know that—and he convinced me that he is going to be a success and I gave him $60,000.

Q. In cash? A. Yes.

Q. All right. What did he do with it, if you know? A. He did go and opened up the Dempsey Vanderbilt.

Q. In Florida? A. Yes.

Q. Whereabouts in Florida? A. I think it is on 18th Street.

The Court: 18th Street, Florida?

The Witness: 18—

The Court: A pretty wide street.

Q. What city or town in Florida? A. Miami. I am sorry.

Q. Well, how long did he continue in the hotel business in Miami Florida? A. I don't—I'm not sure but I think he was two or three years; I think it was two, more likely.

Q. Two or three years.

(44) The Court: Now, let me ask you: At this time, when he asked you for the $60,000 and he told you that he had still 6% in the old company, did the

conversation end right there or did you have a further discussion?

The Witness: We had discussions for about two months.

The Court: What was the result of the discussions?

The Witness: I told him he didn't have any.

The Court: Didn't have any because he had been overdrawn thirty-five thousand dollars from the old company.

The Witness: Yes, sir.

The Court: And if I recall your testimony you accused him of having overdrawn 50,000 but he proved to you it was only 35,000.

The Witness: Yes.

Q. And did you make a trip to Florida at about this time, when he was in the hotel business? A. I think about the second year when he was in business.

Q. All right. A. Maybe it was the first. I am not sure.

Q. All right. Now, after that time when did you next see Rutkin? A. Well, I saw him when he was in Florida and I believe he came back a few times from Florida to New York and I probably seen him two or three times or maybe more; I don't (45) remember.

Q. During this period of time did you give him any money, any further financial assistance? A. No, sir.

Q. When did you next give him any assistance of any kind? A. In 1941.

Q. I direct your attention to 1939, when you met— A. I gave him a job in '39.

Q. You met him in California, did you not? A. Yes. I was there on business.

Q. And he returned from California to Chicago with you? A. Well, he called me up one day and he told me he was in California.

Q. What was his position at that time? What was his condition, financial condition, and state of health, and whatever else you care to say about it? A. His financial condition wasn't very good. His health was very good.

Q. All right. What did he say to you at that time? A. He didn't say anything to me except he called me a couple of days later and he told me he is going to go home.

Q. All right. A. I says "Well, would you mind coming home—wait another day? I am leaving," I think it was on a Friday; "would you mind coming with me on the train? I want to talk to you." (46) And he cancelled the other reservation—he was going to fly back with somebody. So he agreed. I met him at the train, and it was Friday, and I had a talk with him because—

Q. Tell us the conversation. A. Well, I don't remember exactly but my idea was to try to get him either a job or something with him so he could make a living, because it worried me a bit, that he was going around without any money.

Mr. Van Riper: If the Court please, I object to the witness' ideas. I don't object to what he said.

The Court: Objection sustained.

Q. What you observed and what he said, and what you said to him. A. I said to him that it is about time he should settle down and that I would like to give him a job, and to learn the liquor business and maybe later on I will be able to help him to get in business for himself, in the liquor business.

Q. Did you arrange to get a job for him with Browne Vintners? A. We arrived on Sunday in Chicago and I think we stayed at the Congress Hotel, and on Monday I took him up to our office to introduce—

Q. You say your office. You mean the office of Browne Vintners in Chicago? (47) A. Browne Vintners.

Q. All right. A. I introduced him to a fellow by the name of Lasky. He was our middle west manager.

The Court: Did you get him a job?

The Witness: To give him a job.

The Court: Did you get him a job?

The Witness: I did.

The Court: How much?

The Witness: Well, I didn't arrange that time. I came home, because I was in—

The Court: How much did you get him a job for?

The Witness: $15,000 a year.

Q. You arranged a job and he was paid $15,000 a year, is that right? A. Yes.

Q. How long did he continue in that job? A. I don't know; about six or eight months.

Q. When did you next see—

The Court: What happened then?

The Witness: Well,—

The Court: Why did he leave the job?

The Witness: He called me up one day and told me he was in Boston, told me that he had some trouble there, and that he called Mr. Kessler to come out there as his (48) attorney and he refused to come out unless he arranges to give him $2500.

Q. What for? What was his trouble? A. He was on some charge of whiskey business or something.

Q. All right. A. Something about violation of the whiskey business.

Q. All right. A. I don't remember exactly. But I did—he wanted to borrow this $2500 and, I told him that I will, because I felt bad over it, to see the man in trouble—the attorney didn't want to go out. So I arranged with

Kessler. I don't remember whether I gave Kessler $2500 —whether he came back and I gave it to him.

Q. When you say—Rutkin came back and you gave it to him? A. I don't remember which one it was.

Q. All right. A. But I know Kessler went out there. Then I think he came back. But in the meantime when we heard about his trouble, the sales manager and I decided that we can't continue with him. So when he came back the sales manager told him that we can't keep him on any longer.

Mr. Van Riper: Wait a minute. If your Honor please, I object unless the witness was there.

The Court: Were you present at the time?

The Witness: Was I present—?

(49) The Court: At the time when Rutkin was fired?

The Witness: No, sir.

The Court: Well, don't tell us about that then. Anyhow, he was fired because of trouble.

Q. All right. Then you didn't see Rutkin for a year or so after that? A. Yes, I didn't see him for a year.

Q. Well, let's fix the time. This was in the fall of 1939, the latter part of 1939? A. Well, this was—

Q. That you got this call? A. Early in '40 or late in '39; I don't remember.

Q. Yes; when you had this conversation relating to the $2500 for Rutkin, who was in Boston; is that right? A. Yes, it was in '39.

Q. All right. When did you next see Rutkin? A. Well, about a year later.

Q. Where? A. He came to Browne Vintners.

The Court: Tell us what happened. Go ahead. Tell us what happened.

The Witness: Well, he got a year in jail. He went away for a year.

The Court: Well, he didn't get a year in jail and Browne Vintners.

(50) The Witness: Well, he didn't come back for a year.

The Court: You saw him in Browne Vintners?

The Witness: Yes.

The Court: Did you have any discussion with him then?

The Witness: Yes, sir.

The Court: All right, What was their discussion?

The Witness: Not very much of anything, except he was telling me his troubles.

The Court: His troubles were what?

The Witness: That he just came out and needed some money, and I gave him, I think, two or three thousand dollars to help him out.

Q. All right. Now, did you give him any financial assistance in connection with a proposed purchase of a tavern by him in Newark? A. That was after we sold Browne Vintners. It came in '41.

Q. Yes. All right. Directing your attention to that incident I want you to tell us about that. A. He came to see me and told me that he would like to buy a license from a tavern in the Roseville section and there is a garage, he is going to move the license into the garage and make a restaurant out of it, and it would take about twenty or thirty thousand dollars to do that, would I help him. Well, after talking awhile I agreed to give him (51) $5,000 to buy this license. He came back a few days later and he says he has made arrangements for the license and he gave his saloon keeper the $5,000; now he needs five more

to arrange the lease on the garage and start fixing it up. So I gave him five more. Then I didn't see him for a while.

(52) Q. Well, how long a time elapsed? A. About a week or ten days.

Q. All right. Did you have a conversation with him concerning this money amounting to $10,000 that you gave him? A. Well, he came back for more money.

Q. He came back for more money? A. Yes.

Q. Well, what was the conversation at that time? A. Well, I told him that I was told that he took $10,000 and lost it at the race track.

Q. All right. A. (Continuing) And that he didn't buy any license or any—didn't take any lease on any garage.

Q. I see. A. (Continuing) And that was our first trouble.

Q. All right. And then you say he made a further demand for money, is that right? A. No, not at that time, we had an argument and he left.

Q. All right. Will you tell us what was said? What was the argument about? A. Well, he said it wasn't true and that he did buy the saloon, and I told him that, I am not going to give him another cent, I am finished.

Q. What did he say? A. He just went away.

(53) Q. All right. This was in 1941, is that correct? A. In '41, yes.

Q. All right. When did you next see Rutkin? A. I would say a week or ten days later, maybe two weeks.

Q. 1941? A. Yes, sir.

Q. All right. At what part of the year was this? A. That was in '42, you see the 10,000 I gave him must have been late in '41.

Q. All right. Late in '41. And then you saw him again some time later on in 1942, is that so? A. Then I didn't see him 'til, I think it was about, well, two or three months later.

Q. All right. A. I don't remember just the time.

Q. And where did you see him? A. He came up to the office.

Q. What office is that, Mr. Reinfeld? A. Browne Vintners.

Q. And where is that? A. That was on 50 Rockefeller Center.

Q. Even though Browne Vintners had been sold, you were still employed by Browne Vintners, is that right? A. I was, yes.

Q. Under an arrangement with Seagrams Distillers? (54) A. Yes.

Q. You were given a job, continued as president, did you? A. I didn't want the job but they wouldn't buy the business unless I signed on for five years with them.

Q. And you did sign up for five years, and that was one of the considerations of the sale? A. Yes.

Q. You say you didn't want the job? A. I didn't. That went on for about two months, I refused to continue, and they refused to buy it until I signed up for five years that I will stay and run the business.

Q. What salary were you paid? A. I was paid $40,000.

Q. A year, is that right? A. Yes, sir.

Q. All right. Then in 1942 Rutkin came up to the office of Browne Vintners and you had a conversation with him; will you tell us what was said? A. Well, I saw him before that a couple of times, then he came up in November, late in October or early November, and he was telling me again his troubles.

The Court: Was that in 1942?
The Witness: Yes, in '42.
The Court: All right.

A. (Continuing) And he started off saying "Where is my money?" (55) I said, "What money are you talking

about?". I saw he was very upset and very excited, and he says, "You all—"

Q. Keep your voice up, will you? A. (Continuing) "You all done well, you all made a lot of money, what about me?"

I said, "What do you want from me now that you threw all your money away? I haven't got your money."

Well, he started telling me that he owes money to everybody and he is ashamed to walk the street and that he must have a hundred thousand dollars to pay his debts. So I told him I wouldn't give it to him. That started an argument. I was sitting behind my desk, he was sitting in front of it, he got up and he threatened me.

Q. How did he threaten you; what did he say? What did he do? Tell us that in detail. Well, he had his hand in his pocket (indicating) and said that he would kill me if I didn't give him the money in three days.

Q. He said he was going to kill you if you didn't give him the money in three days? A. That's right, sir.

Q. What else was said? A. Then he run out.

Q. He ran out? A. (Continuing) And I just sat and I didn't know what to do.

(56) Q. Were you engaged in engaging in any business deal at that time? A. I had an appointment to close a deal on White Rock at 2 o'clock.

Q. What happened to that? A. I called the agent up after this happened and told him to call the deal off.

Q. Why did you do that? A. I was just disgusted and discouraged with everything.

Q. As a result of wh[illegible]

Mr. Van Riper: If the Court please, I don't want to interrupt Mr. Tyne, and I know Mr. Tyne is doing the best he can with the witness; I really can't hear him.

The Court: "I was disgusted—"

The Witness: I was.

The Court: Speak up.

A. I was disgusted and discouraged with business and everything.

The Court: Now, remember, Mr. Reinfeld, that the defendant and every member of the Jury and both Counsel must hear you, so keep your voice up.

The Witness: Thank you.

Q. All right. As a result of what were you discouraged and disgusted? What caused that feeling? A. Well, for so many years I thought—

(57) Mr. Van Riper: Now, if the Court please, I object as to what caused his discouragement.

The Court: Yes, I will sustain the objection.

Q. Well, did that have any direct relationship upon the threat that Rutkin had made?

The Court: I told you I sustain the objection.

Mr. Tyne: All right, sir.

(58) Q. When did you next see Rutkin? A. I think it was a couple of weeks later.

Q. Where? A. He came into the office.

Q. Same office, Browne Vintners, Park Avenue, New York? A. Same outfit, same place. My secretary told me that Mr. Rutkin came in. I told her to tell him I will see him in fifteen minutes and I was thinking whether I shall go out to see him in the reception room or tell him to come in, because at that time I started to fear and then I didn't want the people in the office to hear this screaming—he was screaming so I was thinking it was only a couple of

minutes, he just came in, just pushed the secretary aside and it was just the same thing about the money.

Q. What did he say? A. Well, the same thing, that if I don't give him that money that he is going to kill me.

Q. What did he demand of you at that time? A. He went up to $150,000.

Q. What did you say to him? A. I told him I was going to give him that and he left. He said something about so many days or something like that but I don't remember exactly.

Q. What happened to you about this time, if anything? A. Well, I took sick.

(59) Q. And where were you living at that time? A. I lived at the Pierre Hotel.

Q. Were you taken to your bed at that time? A. Yes.

Q. And did you see the defendant at the Pierre Hotel? A. Well, I think I was there a week or so, in fact, and he called me up.

Q. You say he. A. Mr. Rutkin. He said I hear you are sick and he started apologizing and he asked when he could see me; I says yes and he came up.

Q. He came up to the hotel? A. To the hotel and I put my robe on and walked in the living room and I don't remember what he was talking about, nothing bad; he asked me if I have any whiskey and I brought a bottle and brought some soda and I had a drink and he had a couple of drinks, and he said, "Well, I am going." So I followed him to the door because the bedroom was on the other side, I followed him to the door and he opened the door and started to walk out. He turned around and put a gun on me.

Q. Put a gun on you? Did you see the gun? A. Yes.

Q. What did he say when he put that gun up to you? A. He said, "You get well and get me that money." At that (60) time he said $200,000, "Get me $200,000 or I will kill

you." The same old thing, he slammed the door and he went out.

Q. And what happened to you at that time? A. Well, I stayed in bed, I didn't even want to tell my family about it and some time later I was just getting well but I still was in the house, he called me up and says he was sick, he was at the Warwick Hotel and he started to apologize and it sounded to me like he was crying over the phone.

Q. Sounded like he was crying over the phone. Go ahead. A. I felt badly about it and I said, "All right, I will come to see you." I went down to the Warwick, I came in his room and it looked like it wasn't cleaned or anything for a few days. He wasn't shaved; the room looked quite a mess and the tears were coming down his cheeks. The food stood there; he says, "I can't eat, I haven't slept since I was up to see you; I don't know what's wrong with me for me to talk to you that way. I must have been crazy or something," and I felt very sorry for him and I just put my hand on his shoulder and I said, "Let's forget the whole thing," and he kept apologizing. And then he was telling me that he hadn't paid any rent in a long time so he owes the hotel rent, would I give him money to pay the rent.

Q. How much did you give him? A. He told me he owes $4,000 for room rent and some other (61) things he owes to the hotel. I didn't have the money with me. Then I says, "Jim, you get a shave, get into some clothes and I will go and get the money and I will meet you in the lobby." I came back and he was waiting and I gave him this $5,000. He went over to the cashier's window and paid his bill. I don't know what the bill was or how much he did pay but I saw him pay it and he came back and he told me if I could only give him another $5,000, how much he will think of me and all that. So I gave him another $5,000 at about 5 or 6 o'clock that afternoon. From then on I didn't see him.

Q. For how long? A. I don't know whether it is a month or three weeks or two weeks, I don't remember. I saw him when he walked into Mr. Holtz' house.

Q. When you saw him at Mr. Holtz' house, that was the occasion that you had received a call from Zwillman to meet you over there, is that right? A. Yes.

Q. Did you expect to see Rutkin there at that time? A. No, sir.

Q. And this meeting at Lou Holtz' house—

The Court: This Lou Holtz, who is he?

The Witness: My brother-in-law.

Q. Where is Mr. Holtz' house in Newark? (62) A. On Wilbur Avenue, I think it is 15.

Q. How did you come to make arrangements to meet at your brother-in-law's house? A. Well, Mr. Davis told me that Mr. Zwillman wants to see me.

Q. Mr. Davis told you, is that right? A. Yes. Well, Davis was—

The Court: All right, you went there. Now, who was at Holtz' when you went there?

The Witness: At Holtz'?

The Court: Yes. You went there at Zwillman's invitation extended through Davis.

The Witness: Yes.

The Court: Now, who was there when you got there?

The Witness: Well, I told the family I am coming over and as it was my brother-in-law's house there was my brother Saul, there was Sam Cohen, the accountant came with me, and we were waiting for them and Zwillman walked in; Rutkin walked in with him.

The Court: Zwillman came?

The Witness: Zwillman came.

Q. Did you expect to see Rutkin there? A. No, sir.

Q. All right. Did you have a conversation with Zwillman? A. Yes.

(63) Q. And that was in connection with this matter that you have already testified to; is that right? A. Yes.

Q. Did you have any conversation with Rutkin at that time or at that meeting? A. Not that morning, no.

Q. During the time that you carried on these conversations with Zwillman, did Rutkin participate? A. No, sir.

Q. This was strictly a matter between you and Zwillman? A. No, there was my accountant; Stacher was there, too.

The Court: Any lawyers there too?

The Witness: No, only accountants.

Q. Did you meet again in the afternoon at Mr. Holtz' house? A. Yes.

Q. Who was present at that time? A. Mr. Kessler, Mr. Zwillman, Mr. Stacher, Mr. Goldstein, Mr. Lentz—I think that's about all, and my brother and brother-in-law and Mr. Cohen.

The Court: Was Mr. Rutkin there?

The Witness: Yes, he came back then.

Q. He came back with them? A. Yes, sir.

Q. Were there any conversations there with you by Kessler and the others with the exception of Rutkin? (64) A. When Mr. Kessler came back, he was supposed to arbitrate about the settlement.

Q. This $125,000 that you referred to before; is that right? A. Yes, he could arbitrate for both of us.

Q. Keep your voice up. A. And he agreed to arbitrate for both of us and my accountant told him the story and when he was through, he told my accountant that what-

ever understanding there was between Zwillman and I, he don't know, but legally I owe this money myself, therefore I should return Zwillman his money, and I did.

Q. You agreed? A. Right. Well, my accountant wanted to argue but I said no, since I chose the same arbitrator that I decided it would be right.

Q. Was there anything said by Mr. Kessler or anyone about any claim by Rutkin? A. No. When we were through, Mr. Kessler said to me, "How about Mr. Rutkin?" He was standing right alongside of us and I said, "Well, what is his claim" and Mr. Kessler said in some way he said, "Well, you been friends, you slept with him for a long time; now go in in the other room and give him some money and get through with it."

Q. "Give him some money and get through with it," is that right (65) A. That's right.

Q. Did you go in the other room? A. Yes.

Q. Tell us what transpired in this other room between you and Rutkin. A. When I asked him what he wants, it started with a half a million dollars and I said, "Last time you only demanded $200,000. Now you have gone up to half a million. I am not going to pay you half a million dollars," I told him. He says, "Well, I will take $250,000"; I says "All right," I wanted to get rid of him anyway and get this off my mind, because I carried it long enough. I was a sick man. So I agreed.

Q. You agreed to pay him? A. Yes, sir.

Q. Now, was that $250,000 subsequently paid over to Rutkin? A. It was.

Q. In cash? A. Yes, sir.

Q. By whom? A. Well, I arranged to meet Mr. Holtz down at the Newark and Essex Building and Mr. Cohen had some money in one of the vaults; he got his and I got the balance that I had because I had Zwillman's money and we gave it to Mr. Holtz and he took it up to Mr. Popik's

office which was in the (66) Newark and Essex Building and gave it to Mr. Popik and I believe Mr. Pearse was there at the time and the three of them went over to Mr. Kessler's office.

Q. Did you go to Mr. Kessler's office? A. I didn't.

Q. Who were the ones who went to Mr. Kessler's office? A. Mr. Holtz, Mr. Popik and Mr. Pearse.

Q. And was this $250,000 paid over to Mr. Rutkin? A. Well, that's what they told me. I wasn't there.

Q. Was there any connection between the payment by you of $250,000 and the payment of $358,000 to Zwillman and Stacher? A. No, sir, no connection.

The Court: What was the $250,000 for?

The Witness: Nothing.

The Court: Did it represent in any way the alleged claim that Rutkin had in Brown Vintners or in any other of your enterprises that you had?

The Witness: He never had, he had never any claim upon anything I have done except up until 1933.

The Court: And that is the time you told him he was overdrawn $35,000 on his six percent?

The Witness: Yes.

The Court: And after that he never put any money in, or what we might call euphemistically protected (67) you, is that right?

The Witness: Sorry.

(Court's question repeated by the reporter.)

The Witness: Protected me? I don't understand.

By the Court:

Q. Well, you said before that when you first took him in he was protecting you and that you gave him three per-

cent. A. He wasn't protecting me, he was protecting the company.

Q. Well, all right, make it the company. But this was not for protecting the company, nor did it represent any unsatisfied financial claim of your company's? A. No, I didn't owe him anything.

Q. Then you say that the $250,000 you gave because of the course of conduct which you have described? A. Yes.

Q. In which he threatened to kill you if you didn't give him, first $100,000, then $200,000, then up to $500,000? A. Yes.

Q. And you compromised that little business for $250,000? A. Yes.

(68) The Court: All right, the jury will be excused first.

(Adjourned to Wednesday, October 11, 1950, at 10 o'clock a.m.)

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(70) Newark, New Jersey.
Wednesday, October 11, 1950.

(Trial resumed pursuant to adjournment.)

(Appearances as before noted.)

JOSEPH H. REINFELD, resumed the stand.

Direct examination (resumed) by Mr. Tyne:

Q. Mr. Reinfeld, you testified yesterday that there was a meeting in the cellar of Mr. Holtz here in Newark attended by Mr. Zwillman who brought Mr. Rutkin with him, is that so? A. Yes.

Q. You also testified that you had a conversation with Zwillman concerning his claim? A. Yes, sir.

Q. Will you tell us who was present at that time so we will have it fresh in our minds? A. Well, there was Mr. Zwillman, Mr. Stacher, Mr. Goldstein—

Q. Keep your voice up. A. (Continuing.) Mr. Cohen, my brother Sol Reinfeld—

The Court: Speak up, please—

A. My brother-in-law.

The Court: —so that the defendant and all of the jurors may hear you.

The Witness: I will do my best.

The Court: I shall prod you from time to time so that you will do your best.

A. My brother-in-law, Mr. Holtz and myself.

(71) Q. All right. Now, can you fix the time? You said it was Saturday, I believe; is that so? A. Yes, the appointment was made for between 10 and 11.

Q. On a Saturday. Was it in December of 1942 or the early part of 1943? A. '42.

Q. December of 1942, is that right? A. Yes, sir.

Q. Now, you testified that you had a conversation with Zwillman. After that conversation was concluded, did anybody else say anything? A. Mr. Rutkin.

Q. Will you tell his Honor and the Jury what he said at that time? A. He got up and he said he is going to kill me and the family if he doesn't get the money.

Q. Did he say anything further? A. No, sir.

Q. Did you say anything to him? A. No, sir.

The Court: Where was this he said it to you?

The Witness: In Mr. Holtz' house.

The Court: Who was present when he said that?

The Witness: My brother-in-law was there.

The Court: Your brother-in-law?

(72) The Witness: Mr. Holtz, my brother, and Mr. Zwillman, Mr. Stacher,—

The Court: Well, did he say this before all these people?

The Witness: I am sorry. He asked Cohen and Goldstein, I think, to go upstairs. They went out of the room.

Q. Mr. Cohen was your accountant and Mr. Goldstein—

The Court: Wait a minute. Did they go out?

The Witness: Yes, sir.

The Court: And then there were left in the room you, Rutkin, Zwillman, who else?

The Witness: Stacher.

The Court: Stacher.

The Witness: And my brother and brother-in-law.

The Court: Holtz and your brother?

The Witness: Yes, sir.

The Court: And then you say that the defendant Rutkin threatened you?

The Witness: Yes.

The Court: In their presence?

The Witness: Yes.

The Court: Now, what did he say?

The Witness: He said if he doesn't get the money, he is going to kill me and my entire family.

(73) The Court: What money?

The Witness: I don't know. I presumed the money that he threatened me before and asked me for.

The Court: All right.

Q. Then you had a subsequent meeting, did you not, in the afternoon? A. Yes, sir.

(74) Q. And did you have a meeting the following day, which was Sunday? A. Yes, sir.

Q. And was it the following day that it was suggested by Mr. Kessler that you go in the next room and get rid of Mr. Rutkin? A. No, sir.

Q. I beg your pardon? A. No, sir, it was the first day.
Q. The first day?

The Court: First day?

A. Yes, in the afternoon of this day.
Q. Of Saturday? A. Yes.
Q. The morning in which this threat was made that you just testified to? A. Yes, sir.

Mr. Tyne: Will your Honor give me a moment, please?

Q. Now, when was the money, this money, this $250,000 paid over to Rutkin? A. In May, 1943.
Q. May 11, 1943? A. Yes.
Q. And that was paid over in Mr. Kessler's office? A. Yes.

(75) The Court: Is that the time the suitcase full of money was brought there? Were you present, by the way?

The Witness: I wasn't.

The Court: You were not present?

The Witness: No, sir.

The Court: All right. Did you get the money?

The Witness: Did I get the money?

The Court: Did you hand it to anybody else?

The Witness: I gave it to Mr. Holtz.

The Court: Where did you get it?

The Witness: I got it from the vault.

The Court: And in what demoninations was it?

The Witness: Large demoninations.

The Court: What do you mean by large?

The Witness: Well, hundreds.

The Court: Well, "large" to you might be small to somebody else.

The Witness: Hundreds, five hundreds and thousands.

The Court: That's large.

(76) Q. Do you know ho delivered that money to the defendant?

The Court: No, to whom did you give the money?

A. I gave it to Mr. Holtz.

Q. And who else? A. And he went to Mr. Popik's office and Mr. Popik, Mr. Holtz and Mr. Pearse went to Kessler's office with the money.

Q. And there it was paid over, is that so? A. Yes, sir.

Q. Did you give any instructions to any of these men that you had mentioned as to what should be done with this money? A. No, sir.

Q. Well, it was to be paid over, was it not? A. Well, they asked me for the money—Popik asked me for the money that he was going to give to Rutkin $250,000 and $358,000 to Zwillman.

Q. You had previously given instructions to Mr. Popik at least, had you not? A. Well, Mr. Popik straightened out the case, yes, he arranged that.

Q. He arranged for the payment of this money, is that so? A. Arranged for the payment, yes. He arranged with me to give him that money, to give it to Rutkin and Zwillman.

Q. He acted as your intermediary between the time this last threat was made and the payment of the money? A. Yes.

(77) Q. Now, between the time this last threat was made and in the cellar of Mr. Holtz' house, did you talk with Mr. Popik about it, just yes or no? A. Yes.

Q. And was it the result of that conversation that arrangements were made to pay Rutkin the money? A. Yes.

Mr. Van Riper: Now, if the Court please, that is an improper question when he asks if it was a result. He can ask what happened afterwards and I have no objection.

The Court: It is a leading question; do you want it stricken from the record?

Mr. Van Riper: Yes.

The Court: Strike it from the record.

Q. What happened as the result of the conversation?

Mr. Van Riper: If the Court please, that is the same question, "as a result of it."

The Court: What happened after the conversation?

The Witness: Well, I had two conversations with Mr. Popik.

The Court: After the conversation you had with Popik following the issuance of this threat in the morning, put it that way.

The Witness: I was asked to go up to Mr. Kessler's office on Monday morning. There was Mr. Rutkin, Mr. Stacher (78) and Mr. Stacher asked me if I would go back in business will I take him in as a partner and I told him no. Then Mr. Kessler said that the boys want more money.

Q. When you say the boys, do you mean— A. Well, there was Rutkin sitting there and Mr. Stacher.

Q. Did Kessler ever represent Rutkin in connection with this money he was demanding from you? A. Well, he only represented him in the cellar when he told me to go ahead.

Q. Get rid of it. A. Straighten it out, give him the money and get rid of it; give him some money and get rid of it.

Q. Did he do anything on his behalf or representing in any way other than that? A. No.

Q. Then on this Monday morning when you were called to Kessler's office there was this conversation when Stacher in the presence of Rutkin said, "Will you take me in as partner in any new business that you go into" and you said no. A. Yes, sir.

Q. Then what was said? A. I told Kessler that I am going to hire my own lawyer.

Q. What did you say in response to this request of Stacher's? A. I said no that I am not going to take him in as a partner.

Q. Then what was said and by whom? (79) A. Nothing said after that. I told Kessler that I am going to get my own lawyer.

Q. You said something about Stacher. A. Kessler said that he wants more money.

Q. What did you say to Stacher when he asked you to take him in as a partner? A. I said I wouldn't.

Q. What did he say? A. He didn't say anything.

Q. Something was said by someone. A. By Mr. Kessler.

Q. What was said? A. I don't remember whether he said "they" or "he" wants more money; then I said "Well, I have my own counsel" because Mr. Kessler represented me too at the time and he said, "By all means, go ahead."

Q. And it was then that you went to see Mr. Popik? A. Yes, sir.

Q. And did you tell him— A. Told him the whole story from the beginning to the end.

Q. Now, as a result of that conversation, did you make any decision with respect to the payment of the money to Rutkin? A. No, sir. He told me he was going to see Kessler about it.

Q. All right. Do you know whether or not he saw Kessler? A. He told me he did see Kessler.

(80) Q. Following that, did anything transpire between you and Popik—don't tell us the conversation, just yes or no. A. Between me and Popik?

Q. Yes. A. Yes.

Q. And what happened following that conversation? A. Well, following the conversation he told me that I should go and see the prosecutor.

Mr. Van Riper: Now, just a minute, if the Court please. May I ask who told him that?

The Witness: Mr. Popik.

Mr. Van Riper: Now, your Honor has already ruled upon the admissibility of conversations.

The Court: Well, Mr. Van Riper, you have permitted this line of questioning which is patently objectionable to go in. I shall not strike it from the record now, but I shall direct the United States Attorney not to ask for conversations with this man and someone else not in the presence of the defendant.

Q. You remember that, will you, Mr. Reinfeld?

The Court: No, you remember it.

Mr. Tyne: All right, I will, sir.

Q. What happened after this conversation with Mr. Popik? What did you do, not conversation. (81) A. Well, I would have to go back to say I spoke to Popik about—

Q. Well, don't tell us any conversations you had with Popik. A. All right.

The Court: After you had the conversation with Popik what did you do?

The Witness: Well, I left it to Mr. Popik to take care of it.

Q. To take care of what? A. Take care of—

Mr. Van Riper: Now, if the Court please, I object—

The Court: No, this is simply indirectly getting at this conversation.

What did you do? Did you go some place or do anything?

The Witness: Yes, I went back to New York, to my business.

The Court: You went back to New York. All right.

Q. And what did you do with respect to the money, if anything?

The Witness: Well, that didn't take place till some time later.

The Court: Whenever it took place, the question is what did you do?

(82) The Witness: Mr. Popik asked me for the money—

The Court: No, not what he asked; what you did.

Mr. Fyne: May I ask this?

Q. Did you get the money? Did you arrange to get the money? A. I did.

Q. All right. And you arranged through whom to get the money? A. I had some of it in the vault and some of it Mr. Cohen had.

Q. All right.

The Court: Excuse me, Mr. Pearse. I prefer to have you sit away from that press table, please.

Mr. Pearse: Oh, I am sorry.

The Court: No, it is for your convenience because they will be moving around.

One of these gentlemen yield a seat to Mr. Pearse.

Mr. Pearse: I am sorry.

The Court: No, it is simply for your convenience, Mr. Pearse.

Q. You say the money was secured, is that right? A. Yes, sir.

Q. Now, did you accompany—was it Mr. Holtz and Mr. Renfield to Newark with this money? A. It was Mr. Cohen and myself that gave Holtz the money.

(83) Q. Where? A. At the Newark, Newark and Essex Building.

Q. And did they leave you then? A. They left me, went upstairs to Popik's office.

Q. Was this $250,000 that was given to Rutkin included in that money? A. Yes, sir.

Q. And they went on up to Mr. Kessler's office? A. Yes.

Q. You did not go? A. No, sir.

Mr. Tyne: Cross examine.

Cross examination by Mr. Van Riper:

Q. Mr. Reinfeld, I am sorry but I don't think I have it clearly in my mind just where the meeting took place at Holtz' home and who was there.

The Court: How many meetings were there at Holtz' house?

The Witness: There was one a Saturday morning, one Saturday afternoon and one Sunday afternoon.

The Court: All right.

Q. Now, did you tell us yesterday, that there were three meetings at Holtz' house? A. I don't think I did. I wasn't asked.

(84) Q. How many meetings did you tell us about yesterday, Mr. Reinfeld, at Holtz' house? A. I think we were only talking about the morning meeting.

Q. Of which day? A. I am sorry. The afternoon meeting, I think.

Q. Of which day? A. Of Saturday.

Q. Of Saturday. Now, I understood you to say yesterday that Mr. Davis arranged for this meeting. A. Yes, sir.

Q. Is that right? A. Yes, sir..

Q. Mr. Joseph Davis? A. I am not sure. I think it was either he or Harry but I think it was Joe.

Q. Well, are you sure that it was one of the Davis's? A. Yes, sir.

Q. They are brothers, are they not? A. Yes, sir.

Q. And they were both stockholders in Browne Vintners, were they not? A. Yes, sir.

Q. Did you have any conversation with Zeillman about the meeting, just prior to the meeting? A. No, sir.

(85) Q. Now then, on Saturday what time did you get to Mr. Holtz' house?

The Court: When? In the morning or afternoon?

Mr. Van Riper: Well, when he first got there.

Q. When you first got there. A. Ten o'clock in the morning.

Q. Ten o'clock in the morning. And who was there when you got there? A. My brother and brother-in-law.

Q. Which brother? A. Saul.

Q. And by your brother-in-law you mean Mr. Holtz, I take it? A. Yes, sir.

Q. Now, had you made any arrangements for your brother to be there? A. About—yes.

Q. And had you made any arrangements with Mr. Holtz to make sure that he would be home? A. Yes.

(86) Q. And when had you heard from Mr. Davis requesting the meeting? A. About three to four days before that.

Q. And who came in shortly afterwards? A. Well, there was—I am sorry,—Mr. Cohen was there, came in with me that morning—

Q. Mr. Cohen arrived with you? A. Yes.

Q. And by that you mean Mr. Samuel R. Cohen? Is that correct? A. Yes, sir.

Q. Who is now dead? A. Yes, sir.

Q. And Mr. Cohen had been the accountant for you for some time, had he not? A. Yes, sir.

Q. All right. Then, after you and Mr. Cohen arrived, did anyone else arrive? A. Well, about 10:30 or so, or a quarter to 11, Mr. Zwillman arrived, Mr. Stacher arrived—

Q. Did they come together? A. (Continuing) —Mr. Rutkin arrived, Mr. Goldstein arrived; they came together.

Q. All four of those last-named gentlemen came together? A. Yes.

Q. I see. All right. And then a conversation took place (87) for how long a period of time, would you say? A. I think we started talking about 11 o'clock and I think it was over around 12 or a little after.

Q. Now, who started the conversation? A. Mr. Zwillman.

Q. What did he say? A. He said that the money he gave me towards the taxes isn't right.

The Court: Speak up, please.

A. (Continuing) That he wants it back—and Mr. Cohen, which he told Mr. Cohen that he wants to give me the money towards the case, told him that he was wrong. Then Mr. Goldstein was showing Mr. Cohen that he was wrong and had quite a talk about it. I don't know exactly the words, but I think Mr. Zwillman said, "Well, what are we going to do?" I says, "What do you want to do?"

He says, "Well, how about calling Mr. Kessler? Would you be satisfied if he decided it one way or the other?" I says, "Yes, I would."

"Well," he says, "I am going to call him, and you stay here." And I think he called him from the house and he told me to be there at 3 o'clock, that he will be back with Mr. Kessler at 3 o'clock.

Q. So that broke up the morning meeting? A. That broke up the morning meeting, yes.

(88) Q. Then, did you go back at 3 o'clock? A. No, I stayed there.

Q. You stayed there. Well, at 3 o'clock did the other people come back? A. Yes, sir.

Q. And who came back? A. Well, Mr. Zwillman, Mr. Stacher, Mr. Rutkin, Mr. Kessler, Mr. Goldstein, and a man by the name of Lentz.

Q. Sam Lentz, is that it? A. Yes.

Q. And he had been a partner of yours in Browne Vintners, had he not? A. Yes, sir.

Q. And he had been a partner of yours prior to Browne Vintners, had he not? A. Yes, sir.

Q. All right. Now, they are all back there. Now, what happened? A. Well, my accountant told Kessler the story, Goldstein told him the story and Kessler just thought for a few minutes and he said to me, "Well, Joe, I don't know what understandings you had before with Zwillman or any of the boys, but according to the law the tax was your own matter and you should return the money to Zwillman," and I agreed. That was all there was to it.

(89) Q. Well, first of all, didn't Mr. Kessler say to you, "Joe, you know that this tax was your own personal tax?" A. After he said that, he said, "Whatever the understanding was between you and Zwillman or the boys, I don't want to know anything about it, but according to the law it was your own case and you owe the money."

Q. And didn't Mr. Kessler say something to you to the effect that you were trying to cheat the Goverment out of the tax— A. No, sir.

Q. Wait a minute, will you, please, until you hear my question. —and the Government caught up with you and it was your responsibility and you had to pay that tax? A. No, sir, he never mentioned.

Q. He didn't. You admit that, did you not, that it was your own personal tax? A. Yes, sir.

Q. And you admitted, did you not, that the tax was much more than $400,000, but that you compromised it for $400,000? A. My tax wasn't $400,000, my tax was $240,000.

Q. Well, you worked out a compromise with the Government, did you not? A. There was the Kanengiser group involved in this tax matter.

Q. What period of time? (90) A. (Continuing) And when he returned the taxes to me, he returned it to them, too.

Q. What period of time did this tax cover? A. The tax cover? The Government's claim was from '26 to '35 or '36.

Q. '26 to '36. Had you paid any tax, yourself, during that time? A. Yes, sir.

Q. How much? A. I don't remember.

Q. Isn't it a fact that during all that time, while you were engaged in the liquor business, you paid about $2,000 tax? A. I couldn't say one way or the other.

Mr. Tyne: I object to that, if the Court please, as irrelevant and immaterial, and the fact is it will prejudice the Government's case.

The Court: I don't know how it is material except it may be an indication about the amount of settlement. Let it go.

Q. Now, sir, you have told us the names of the gentlemen who were there on Saturday afternoon, have you not? A. I did.

Q. And you are positive, are you not, that it was on a Saturday afternoon when you had this conversation in which (91) Mr. Kessler participated? A. Yes, sir.

Q. Now, when Mr. Kessler came in, was there something said to him about acting as arbitrator between you and Zwillman? A. Well, I assume that that is what Zwillman told him before he came there.

Q. Now what you assume.

The Court: Was that said at the time he came in?

The Witness: Well, I said he could represent me; he was supposed to represent Zwillman, but I told him he could represent me, too.

Q. You told Mr. Kessler that? A. Yes, sir.

Q. When he came in? A. Yes, sir.

Q. Now, do you mean by that that he was to represent you as counsel or that he was to be an arbitrator between you? A. Well, as counsel and arbitrator.

Q. Well, Kessler never said that he would represent you as counsel and represent Zwillman as counsel at the same time, did he? A. Well, he represented me, he said he would.

Q. You mean to say now, Saturday afternoon, in Holtz' house, Kessler representing Zwillman as a client, accepted you as a client? (92) A. Yes, sir.

Mr. Tyne: I object to the question as being argumentative, if your Honor please.

The Court: No, he answered it "yes."

Q. You are positive about that? A. That is the way I felt.

Q. Now, as a matter of fact, Mr. Reinfeld, didn't you have your own counsel there at that time? A. No, sir.

Q. Didn't you have Popik there? A. No, no, Popik at that time didn't know a thing about this case.

Q. Wasn't Popik at Holtz' house at the time that Kessler came there? A. No, sir.

Q. You are positive about that? A. Positive.

Q. Was Popik ever at Holtz' house at any conference when Kessler was there? A. No, sir.

Q. You are positive about that? A. Positive.

Q. All right. Now, you first went into business with Rutkin in what year? A. About 1929.

(93) Q. About '29. And at that time you had, among other things, an interest in a company up at St. Pierre known as Chartier Company, is that right? A. Yes, sir.

Q. And that company owned several boats, did it not? A. That company didn't own any boats.

Q. It chartered boats, did it? A. With Mr. C. P. Chartier own the boats. He was in a fishing business, also.

Q. And he was an officer of the company? A. Yes, sir.

Q. Now, then, you told Rutkin and your other partners, did you not, that the interest which you had in Chartier was your personal business; isn't that so? A. Yes, sir.

Q. And that they, your partners, had no part in the Chartier business? A. Yes, sir.

Q. That was clearly understood, was it not? A. That's right.

Q. Now, then, at the time that Rutkin came in you had been in business with Kanengiser, Facher and a man by the name of Hendler, have you not? A. Yes, sir.

Mr. Van Riper: We talked about that name yesterday, (94) and I think in fairness to some names, that the record ought to be Hendler, the name is H-e-n-d-l-e-r, not Handler.

The Witness: That's right.

Q. Now, then, Mr. Hendler had a part of your partnership, didn't he? A. He did.

Q. What part did he have? A. He had three percent.

Q. Didn't he have six percent? A. No, sir.

Q. And when he got out didn't Rutkin take over Hendler's share? A. He did.

Q. And that was the full share that Hendler had? A. Yes, sir.

Q. Is that right? And that is the time that Rutkin came in, was it not? A. No, he came in before that.

Q. And Hendler got out? A. No, he came in before that.

Q. Now, you testified in New York on this subject, did you not, Mr. Reinfeld? A. Yes, sir.

Q. And you were asked in New York when Mr. Rutkin came in, were you not? (95) A. I was, yes, sir.

Q. And you were asked what percentage he had?

Mr. Tyne: Wait a minute, now. If Counsel is going to direct the witness to testimony he gave in another hearing, first I think the materiality ought to be shown and then the specific questions should be asked.

The Court: I think that is true, Mr. Van Riper.

Mr. Van Riper: It certainly will be.

The Court: If you have a record.

Mr. Van Riper: I will certainly call his attention to it.

Q. You testified in New York, Mr. Reinfeld, did you not—

The Court: No, have you the record?

Mr. Van Riper: Yes, sir, I have, sir.

The Court: All right, you can read from the record.

Mr. Van Riper: I am going to call it to the witness' attention.

Q. Do you recall giving testimony in New York in the suit of Mr. Rutkin against you on November 18, 1948, before Mr. Fried, I think it was? A. Yes, sir.

Q. The attorney over there. And were you asked at that time whether or not Rutkin took over—

The Court: No, just read the question, please, Mr. Van Riper.

(96) Mr. Van Riper: Yes, sir.

Q. Were you asked at this time this question, page 36:—I think we better go back to page 35, Mr. Tyne.

"Will you please explain then what you meant by that is the time Mr. Rutkin came in?" And did you answer: "I was doing a high seas business. At that time we were—I will give you the partners. Do you mind if I read it off a paper?" Do you remember that? A. That's right.

Q. And were you asked: "If you have something that will refresh your recollection, why, go ahead and read it." Do you remember that? A. Yes.

Q. Now, did you answer: "Thank you. In 1926 Mr. Kanengiser, Mr. Facher, Mr. Lentz, Samuel Lentz, and a fellow by the name of Schnefder—Martin Schneider. We were partners on the high seas business. In 1929 Mr. Rutkin came along, became a partner. At that time there were already Mr. Harrington, Mr. Magyer, Mr. Callahan, Edward Costie, Felix Arnold, William White. That was one combine with 6 percent, Magyer had 5 percent, Callahan had 2½ percent, Ben Harrington had 5 percent, Kanengiser and his group had 31½ percent, Mr. Rutkin 6 percent, and I had 44 percent." (97) A. That is correct.

Q. Did you say that? A. Yes, sir.

Q. You said that in New York? A. Yes; but may I explain that?

Q. You will have plenty of opportunity to explain if Mr. Tyne will ask you the questions. A. Mr. Rutkin—

Joseph H. Reinfeld—for Government—Cross

The Court: Just answer the questions.
The Witness: Thank you.

Q. Now, before Mr. Rutkin came in, you had some conversation with him, did you not, with Rutkin? A. I don't remember just what it was, but I had—

Q. I didn't ask you what it was, but you had some conversation with him, did you not? A. Yes, sir.

Q. And then you told your partners, did you not, that you were bringing Rutkin in? A. Yes.

Q. And Kanengiser was one of your partners at that time? A. Yes, sir.

(98) Q. Now, Morris Kanengiser, that is? A. Yes, sir.

Q. Now, then, after Rutkin came in did you assign certain duties to him? A. No, sir.

Q. At the time that Rutkin came in what was your duty, what were your duties in the combine? A. Buying, buying.

Q. Buying what? A. Buying whiskey, wine, brandy,—

Q. And where were you buying whiskey, wine brandy? A. Buying in Europe, Canada,—

Q. Whereabouts in Europe were you buying? A. Well, Scotland, France, some in Germany.

Q. You were going to those countries at that time to buy it yourself? A. I did.

Q. And when you bought in those countries where would you ship it to? A. St. Pierre Miquelon.

Q. And that was a perfectly legal shipment, wasn't it? A. Yes, sir.

Q. And then what would you do with it at St. Pierre Miquelon? A. Sell it to whoever come to buy it.

Q. And where would they come to buy it? (99) A. To the Island.

Q. Was any of it sold in Newark? A. I presume it was. I am not sure.

Joseph H. Reinfeld—for Government—Cross

Q. Well, don't you know that some of it was sold in Newark? A. No.

Q. Did your combination have an office in Newark? A. They did.

Q. Whereabouts in Newark? A. In the Industrial Building.

Q. And did they have an office in Park Place in Newark? A. Yes, sir.

Q. Whereabouts on Park Place? A. Military Park Building.

Q. And didn't buyers come to that office? A. Yes, sir.

Q. You saw buyers at this office, did you not? A. That was the high seas business.

Q. Just a minute. Did you see buyers at the Newark office?

The Court: Let's get it straight.

Mr. Tyne: Just a minute.

The Court: Now if there is a choice of who is going to talk, you or me Mr. Van Riper and me, I am going to do the talking, here at least. You are talking about the high seas business, is that the business that you conducted at St. Pierre Miquelon?

(100) The Witness: No, sir.

The Court: Well, what business did you conduct at St. Pierre Miquelon? You bought whiskey and other alcoholic beverages in Newark and shipped them to St. Pierre?

The Witness: And sold at the Island whoever came to buy.

The Court: Now what combine ran that business?

The Witness: That was my own business.

The Court: Now did you sell any of that alcohol beverages that you got there in Newark in your own business?

The Witness: No, only when we started the high seas business.

The Court: No, let us stay on this Miquelon business.

The Witness: The Miquelon business—

The Court: Did you sell any of the booze that you had at Miquelon St. Pierre, if you will pardon my entitling your beverages booze, did you sell any of that in Newark?

The Witness: Sold it, yes, to go out and get it on the high seas.

The Court: Now is that your question, Mr. Van Riper?

Mr. Van Riper: Yes, sir, one of them.

The Court: All right.

By Mr. Van Riper:

Q. Then do I understand you mean to say, Mr. Reinfeld, in (101) answer to the Judge's question that the sale took place in Newark, delivery to be made up there? A. Yes, sir.

Q. In St. Pierre? A. No, at the high seas.

Q. Delivery was to be made at high seas. I see. Then the buyers would come into Newark and sales would be made there and then where would you be when that took place in Newark or at St. Pierre? A. Some times I was at Newark, other times I was in Canada and other times in St. Pierre probably.

Q. And when you were in Newark did you participate in negotiations for the sale? A. I may have. I don't know. There was a man in charge there I wasn't in charge of the sales.

Q. Well, now, do you mean you don't recall whether you did or not? A. Well, I say no.

Q. You say no? A. No.

Q. You say definitely no? A. Definitely no.

Q. Now, you owned the largest percentage of this combine, didn't you? A. Yes, sir.

(102) Q. At that time? A. Not of the combination, no, sir, I am sorry.

Q. Weren't you the largest single owner? A. No, sir.

Q. What percentage did you have? A. I don't know what year you are talking about.

Q. I am talking about when the—

The Court: I am afraid this is very confusing. I have in mind now that he has spoken about the business of buying alcoholic beverages in Europe for the Miquelon business in which he owned—did you own that alone?

The Witness: No, sir, it was a group.

The Court: Did you own the greater portion of that?

The Witness: I only had 17½%.

The Court: 17½%. Now was there any other combine running at the same time as that Miquelon business?

The Witness: No other—

The Court: No other combine?

The Witness: Not St. Pierre.

The Court: I don't care where it was. No other combine of which you were a member?

The Witness: No, sir.

By Mr. Van Riper:

Q. Well, now,—has your Honor finished?

The Court: Go ahead.

(103) Q. Now, Mr. Reinfeld, maybe we all had better get straight on this thing. Wasn't it true that at the time

Rutkin came in, you had yourself, as far as Rutkin and Kanengiser and these partners were concerned, you had a business in St. Pierre of your own? A. Yes, sir.

Q. And that business was the Chartier Company? A. Yes.

Q. Rutkin and Kanengiser had nothing to do with the Chartier business. A. No, sir.

The Court: Did you own that alone?

The Witness: I had 17½%.

The Court: In the Chartier business 17½% and Rutkin and Kanengiser were not in that at all.

The Witness: No.

The Court: Now what combine was there in which you and Kanengiser and Rutkin and Zwillman and the rest of them were?

The Witness: The high seas.

The Court: The high seas. Well, that was co-existent, at the same time as the Chartier?

The Witness: Yes, sir.

The Court: That's what I am trying to get at.

Q. And what I am trying to get at is at the same time you (104) had your 17½% in Chartier and you had this percentage with Rutkin and Kanengiser—what percentage did you have in the combine that Rutkin and Kanengiser were in?

The Court: That's the high seas.

A. At the time he joined us or later on.

The Court: At the time he joined you.

The Witness: At the time he joined us I had 44%.

Q. You had 44%. Now how long did you continue to have 44%? A. Till 1930.

Q. And as long as you had 44% is it not a fact that you were the largest individual holder in that combine? A. Well, I also had partners. Each combine had partners.

Q. Mr. Reinfeld, wil you please answer my question.

The Court: No, you were the largest one?
The Witness: Yes.

Q. You were the largest one? A. Yes, sir.

Q. Now, you told us a few minutes ago that at times you were at Newark when buyers came to buy from that combine stuff to be delievered on the high seas, is that correct? A. Yes.

Q. Now, do you mean to tell us, or did you mean to tell us that in spite of the fact that you had that large percentage in the combine, when buyers came in that you didn't talk with (105) the buyers? A. I talked with them.

Q. You did talk with them? A. Yes, sir.

Q. And you negotiated with them about the sale of the liquor?

The Court: No, did you negotiate?
The Witness: Yes, I did.

Q. You did negotiate? A. Yes.

Q. Now, when Rutkin came in did you put Rutkin to work? A. I did not.

Q. Did he go to work? A. He did not.

Q. What did he do at all in the combine? A. In the combine, not very much.

Q. What little did he do? A. I would say nothing at all.

Q. Nothing at all. Now, did the other partners all work? A. No.

Q. They didn't work either? A. No.

Q. Who was the working partner, only you? A. The working partner was Mr. Lentz, Mr. Kanengiser, Mr.

Facher, Joseph Davis and myself, maybe one or two others but I don't remember.

(106) Q. Now then on behalf of that combine you made many trips to Canada, did you not? A. I did.

Q. To buy liquor? A. Yes, sir.

Q. And didn't Rutkin go with you to Canada on those trips? A. We went a few times, yes.

Q. Yes. Did any other partners go with you to Canada to buy liquor? A. Yes.

Q. Which other partner? A. Mr. Kanengiser; I believe Mr. Lentz went over once or twice; and I believe Mr. Zwillman went over once or twice. That's about all I could remember.

Q. And did any of those people go with you to— A. I'm sorry. Mr. Joseph—Mr. Seaman was appointed—you see, each combine had a representative.

Q. Yes. A. The Davis-Seaman combination was represented by Mr. Davis and Mr. Seaman.

Q. That's Eddie Seaman? A. Yes, sir.

Q. Is that right? A. The Kanengisers was represented by Kanengiser and Lentz.

Q. Now, when you went to Canada to buy liquor you did (107) business on occasions with people by the name of Bronfman, did you not? A. Yes, sir.

Q. And they were large sellers of liquors in Canada? A. Yes.

Q. And did you take Rutkin with you to the Bronfmans? A. A couple of times.

Q. Yes. And did you tell the Bronfmans that Rutkin was your partner? A. No, sir.

Q. You never did? A. No, sir.

Q. Did you understand that Bronfman knew that Rutkin was your partner? A. Well—

Mr. Tyne: I object to that.

Mr. Van Riper: All right.

Mr. Tyne: How can he tell what—

The Court: Did Bronfman ever refer to Rutkin as your partner?

The Witness: I don't remember.

The Court: To the best of your recollection.

The Witness: I did introduce him, I think, to Bronfman; I am sure I did.

The Court: As your partner?

(108) The Witness: I don't remember.

Q. Now, I call your attention, Mr. Reinfeld, to the testimony which you gave in New York at the same time the testimony that I talked about before, when you were asked by Mr. Freel—

Mr. Van Riper: On page 101 of the testimony, Mr. Tyne.

Q. (Continuing.) And ask you if you were asked this question:

Mr. Van Riper: Do you have it, sir?

Mr. Tyne: Yes.

Q. (Continuing.) "Did you tell Mr. Bronfman why Mr. Rutkin came along with you?" And did you answer, "I don't think there was any conversation. I introduced him to Mr. Rutkin; the second time I don't know. I feel that he knew that he was with me in business but I never spoke to him about it.

"Question: You say he felt he knew he was in business. Answer: I feel he knew that he was my partner"—

Mr. Tyne: You don't read that right. "You say you feel"—

Joseph H. Reinfeld—for Government—Cross

Q. "You say you feel he knew he was with you in business. Answer: I feel I knew that he was my partner because later on, I think in 1932, I think I told him that Mr. Rutkin was my partner, or 1931, some time around there."

(109) Q. Did you say that in New York? A. I must have said it, yes.

The Court: Do you recall saying it?

The Witness: Yes.

The Court: All right.

Q. Was it true? A. True.

Q. Well, now, is it true now then that you told Bronfman that Rutkin was your partner or isn't it true?

Mr. Tyne: Well, I don't see anything contradictory there. He has admitted—

The Court: Let him answer.

A. I told him—I don't remember whether I did or not.

Q. I just asked you a minute ago, Mr. Reinfeld, if your testimony in New York was true and you said yes. A. Yes.

Q. Your testimony in New York was that you told Mr. Bronfman that Rutkin was a partner, wasn't it? Wasn't that your testimony? A. I don't dispute that he was my partner. I say he was my partner.

Q. That isn't the question.

The Court: No, did you tell Bronfman he was your partner?

The Witness: I did.

(110) Q. You did? A. Yes.

Q. A few minutes ago you said you did not.

Mr. Tyne: No, he didn't.

A. If you insist on it, I will agree with you on it.

Q. I don't want you to agree with me unless it is true.

A. Because it doesn't matter whether I did or not.

Q. Now then, didn't Rutkin assist you in other ways in buying liquor in Canada? A. No, sir.

Q. Did he visit any other people with you from whom you bought liquor in Canada? A. He might have.

Q. Well, what is your best recollection? A. He probably did.

Q. Is there any doubt about it in your mind? A. I don't remember of any.

Q. You don't remember. You are not prepared to say that he did not, are you?

The Court: He says he doesn't remember and that's as far as you may go now.

Mr. Van Riper: All right, sir.

Q. Now, then, did he assist you in getting the liquor on the ships? A. Well, I don't know what you mean.

(111) Q. Well, did he assist you in having it loaded on the ships?

The Court: Where, where?

Mr. Van Riper: In Canada.

A. There was no such thing as loading in Canada.

Q. How did the liquor which you bought in Canada get to the United States? A. It went to St. Pierre.

Q. It went to St. Pierre? A. Yes, sir.

Q. And then from St. Pierre it went out to the 12-mile limit? A. Yes, sir.

Q. And then from there it got into the United States? A. Yes, sir.

Q. Now, what part did you play in that transportation scheme? A. There was no part for me to play except to buy the liquor and then they transferred it by regular liners.

Q. Now then, what part did Rutkin play, if any, in that transportation? A. Well, he didn't play any part.

Q. He didn't. Now, then, when the liquor got to the United States who arranged to receive it here and have it transported within this country? A. Well, we didn't sell whiskey on the high seas. When we sold, we sold a ticket, a paper, to go out and get (112) whatever the buyer wanted to buy.

Q. Now that doesn't answer my question at all, sir.

Mr. Van Riper: Mr. Reporter, will you read the question, please?

Q. (Repeated by the reporter.) Who for your combine?

Mr. Tyne: I submit, your Honor, that the answer is responsive.

The Court: Do you understand the question?

The Witness: No, I don't.

The Court: Well, see if I get your question correctly, Mr. Van Riper.

The question is, who in the United States arranged to get the liquor and transport it from your ships to land?

Is that it?

Mr. Van Riper: Yes, sir; or wherever it was transported to.

The Court: Or wherever it was transported to.

The Witness: Whoever bought it from us.

Mr. Van Riper: All right.

The Court: You didn't do it yourself.

The Witness: Yes, I bought some, too—I sold too, yes.

The Court: To yourself?

The Witness. To myself, no.

(113) The Court: No, no; I am asking you—you say that you sent the liquor from St. Pierre Miquelon out to the 12-mile limit.

The Witness: Yes, sir.

Joseph H. Reinfeld—for Government—Cross

The Court: And then you would sell these orders for liquor to people who would go out and get it.

The Witness: Yes, sir.

The Court: Did you have anything to do with transportation from the 12-mile limit to the land?

The Witness: Not the transportation.

The Court: Only the delivery at the 12-mile limit?

The Witness: Yes, sir.

The Court: And the sale of the orders beforehand?

The Witness: Yes.

Q. Did you have anything to do, Mr. Reinfeld, with the transportation of the liquor after it got off the ships and was put on a dock in the United States some place? A. Only some of our partners.

Q. Some of your partners did? A. Yes, sir.

Q. Well, now, in other words, am I to take it from that that you mean to say that some of the liquor which came in that way, came to the United States, was put on the dock in the United States for the benefit of your combination? A. Not of the combination; of the individuals.

(114) Q. For the individuals? A. Yes.

Q. Well, now, that gives me a new light on this that I didn't know about before. Do I understand from that that when it got here, the individuals acted individually? A. Well, there was some stockholders in the company that we used to give small pieces, like take the Harrington Company. There was a few fellows in that group. They had 5%. There was very little that they could benefit by having 5%. They used to—the reason we gave them 5% was because they used to go out and buy from our boats, and if they wanted to bring the whiskey, they brought it in, they sold it; it was all up to them.

The Court: But that wasn't the combine business?

The Witness: That wasn't the combine.

The Court: It was individual members—

The Witness: But there were—

The Court: Individual members of the combine bought liquor themselves from the combine and landed it in America, in the United States.

The Witness: Yes.

Q. Then is this what you are saying, that when the liquor came into the United States and was sold here, was bootlegged here in plain words, that that was being done by individual members of the combine, if by members of the combine? (115) A. By groups, yes.

Q. And not for the benefit of the whole combine? A. No, sir.

Q. Is that right? And you say you didn't get any profit from that, is that your point? A. I did not.

Q. I see. Now, when that liquor came in, weren't you on many occasions down on the dock with Rutkin? A. I was.

Q. Yes. And weren't you and Rutkin in charge of the docks, in charge of the receiving of the liquor on the docks? A. He wasn't in charge of receiving anything.

Q. Well, weren't you in charge, and didn't Rutkin work with you? A. I wasn't in charge either.

Q. Who was in charge?

The Court: Where was it docked?

The Witness: Well, there was some at Perth Amboy, some in the Highlands.

The Court: What were you doing down there?

The Witness: I was there to sell whiskey.

The Court: Whiskey that was taken off the ships?

The Witness: No, to the people that were bringing it in. They were the buyers.

Q. Now that whiskey that you were there to sell was (116) not going out on the high seas, that had come in already, hadn't it? A. Yes, sir.

Q. Yes.

Q. Yes. A. The whiskey I would sell to them, that was to go to the high seas the next day or the week later, whenever the weather permitted.

Q. It was to go to the high seas? A. Yes.

The Court: What was to go to the high seas? We are talking at cross purposes here. What did you sell?

The Witness: We sold them a receipt.

The Court: You sold a receipt?

The Witness: A receipt to go out and get—

The Court: You did not sell actual whiskey that had been landed?

The Witness: No, sir.

The Court: You sold a receipt and they could go out themselves and get it from the high seas.

The Witness: To the ship.

The Court: To the ship; get a hundred cases or whatever it was.

Q. Now, then, let me get this clear. You were on the docks when whiskey came in. A. Yes, sir.

(117) Q. Usually at night? A. Yes, sir.

Q. Right? And it would come in sometimes in very large quantities, would it not? A. Yes, sir.

Q. Many cases. A. Yes, sir.

Q. Sometimes how many cases? A. A few hundred.

Q. Several hundred, isn't that right? A. Yes.

Joseph H. Reinfeld—for Government—Cross

Q. At times? All right. Now then, at that time there would be a large group of men there, sometimes; right? A. Yes.

Q. A number of trucks. A. Yes.

Q. And the liquor which had come in at night would be sent to various places for storage, wouldn't it? A. Yes, sir.

Q. Garages, and so forth? A. Yes, sir.

Q. And you and Rutkin were in charge of that distribution, were you not? A. No, sir.

Q. You were not? (118) A. No, sir.

Q. Wasn't Rutkin there with you? A. Sometimes he was.

Q. Yes. On many occasions wasn't he on the docks with you? A. Yes.

Q. Yes. And wouldn't you and Rutkin tell the truck drivers what garages to take certain liquor to? A. I did not.

Q. You did not. Didn't Rutkin do it at your instructions? A. No, sir.

Q. Who was in charge of the distribution of that liquor from the dock? A. Whoever brought it in.

Q. Well, you mean the man who was on the boat? A. Well, the owner of the liquor.

Q. That was liquor which had been sold by you, had it not? A. Yes.

Q. In Canada. A. No, at high seas.

Q. All right. You had bought it in Canada, we will say; right? A. Yes, right.

Q. And put it on the ship out at the high seas; right? A. Right.

(119) Q. And then it came into the United States illegally. A. Right.

Q. Right. And you were there when the whiskey came in. A. Yes.

Joseph H. Reinfeld—for Government—Cross

Q. Now do I understand you to say in answer to a question that the Judge propounded to you a few minutes ago that you were down there on the docks, under cover of darkness, for the purpose of selling liquor to go back again on the high seas?

The Court: No, that wasn't his answer to me at all. His answer was that he was there to sell a receipt to people who could go out to the high seas and get it, get the whiskey and bring it in from the ship.

Q. In other words, you were selling receipts for liquor that was still up in St. Miquelon or some other place? A. On the high seas.

Q. On the high seas. And despite the fact that there were there hundreds of cases of liquor sometimes which had been bought by you in a foreign country and had been brought into this country, illegally, you say you had nothing to do with that distribution of that liquor there on the dock. A. Not after it came into the docks.

Q. Not after it came in? A. No, sir.

(120) Q. Why did you go down to the docks to sell those receipts? A. Well, there was more than selling the receipts, that we had to go down, because some of the pullers that we used to—

Q. Some of the what? A. The pullers, the runners.

Q. Pullers? A. The fellows that went out to get the whiskey.

Q. Yes. A. We also gave them credit, and later on it developed that some of them came in with stories that they had to throw some liquor overboard, and things like that, and by giving them credit we sometimes suspected that it wasn't so and we went down to see whether the liquor came in or not.

Q. Now, that was a pretty dangerous business, being around the docks when liquor came in, wasn't it, Mr. Reinfeld? A. Yes, sir.

Q. I mean you stood a chance of being arrested, did you not? A. Yes, sir.

Q. And there were occasions when people have been seriously injured down there, haven't they? A. I don't remember of any.

Q. Well, don't you remember occasions when the Coast Guard would come along and people had been arrested and people (121) had been shot and so forth?

Mr. Tyne: Of course, I object to this—

A. No; I don't.

The Court: He doesn't remember, is the answer.

Q. Did you have in mind that you were taking those chances when you went down on the docks?

Mr. Tyne: I object to it, if the Court please.
The Court: I will sustain the objection.
Mr. Van Riper: All right.

Q. Now, then, isn't it true that Rutkin and you together arranged for places in the United States and particularly around Newark, where liquor which had been brought in illegally could be stored? A. Mr. Rutkin and I didn't do anything of the kind.

Q. Did Rutkin do it alone, so far as you know? A. I don't know.

Q. You don't know that he did? A. No.

Q. Did you do it alone? A. No, sir.

Q. Are you trying to tell us, Mr. Reinfeld, as the result of the answers to these questions that I just propounded to you, that you were not engaged in what was commonly known as the bootlegging business?

Mr. Tyne: I object to the form of the question.

(122) The Court: That's an all-comprehensive question because anybody that had anything to do with the business of transporting liquor from Scotland or France or Belgium or any place else, knowing that it was going to be brought in here, participated indirectly in bootlegging. Now, if you will specify just what you mean, Mr. Van Riper, maybe we can get a direct answer for you.

Q. Isn't it a fact, Mr. Reinfeld, that when you were buying liquor in foreign countries and having it loaded on ships out at sea, and that when that liquor was brought into the United States illegally, you were participating in it for the purpose of selling—

The Court: You were asking him to draw a conclusion and I won't allow the question.

Mr. Van Riper: All right.

Q. When that liquor was brought into the United States, that you participated in the handling and the sale of that liquor in the United States?

The Court: Do you understand that part of the question?

The Witness: I don't, no.

The Court: The question is this: After this liquor had been brought in from the high seas and was landed in the United States, did you participate in the handling and sale or storage of that liquor which had been brought in (123) from the ships which carried your product? A. I did not.

Q. You did not. Did you ever buy or rather—strike out "buy"—did you ever sell or transport liquor in the United States in violation of the law? A. I did.

Q. You did. A. Yes, sir.
Q. When? A. In 1920.
Q. In 1920. And what were you engaged in then?

Mr. Tyne: I object, if the Court please.
The Court: Now, we are not going into the whole history of bootlegging.
Mr. Van Riper: All right.

Q. You have been convicted of crime, have you not? A. I was charged with transportation—

The Court: No, were you convicted of crime?
The Witness: I was.

Q. And what was the crime of which you were convicted? A. Transportation of liquor, and paid a fine of $200.

Mr. Tyne: I object to that and ask that it be stricken out and the jury instructed to disregard it. It isn't the type of offense that can affect a man's credibility, because it doesn't meet with the test of moral turpitude.
(124) The Court: I will allow it.
Mr. Van Riper: Now, if the Court, please,—
The Court: It is allowed, it is allowed.
Mr. Van Riper: All right.

Q. Now, you say you were convicted of the crime of transportation of liquor. A. Yes, sir.
Q. Isn't it a fact that you were convicted of the crime of conspiracy against the laws of the United States? A. I don't know; I don't know much about these—

The Court: Was it for conspiracy to transport liquor?
Mr. Van Riper: Yes.

A. (Continuing.) I just paid the fine for transportation.

The Court: No, no. You were convicted of the crime of transporting liquor. If you say you don't know the nature of the charge, it can be shown easily enough.

The Witness: I don't know; I don't know.

Q. Well, whatever it was, it was in the United States District Court, wasn't it? A. Yes.

Q. Here in Newark- A. Yes.

Q. And you entered a plea of guilty to it, to the charge? A. Yes, sir.

(125) The Court: When was that?

The Witness: In 1920.

Q. All right. Now, Mr. Reinfeld, I call your attention again to testimony given in New York,—

Mr. Van Riper: Page 291, Mr. Tyne.

Q. (Continuing.) —in the same proceeding that we talked about heretofore, to this question:

"Going back to my previous question, you said that you did not see any boats unloaded at docks. Answer: I said I was at the docks and saw boats unloaded, but I said I did.

Question: What did you do there? Answer: Nothing.

Question: Did you go there just as a matter of curiosity? Answer: That is right.

Question: How did you happen to know the boat would be there when you arrived? Answer: Well, I heard from some of the people that they are going to bring a boat in.

Question: And you had no interest at all in the unloading of the boat? Answer: No, sir."

Q. Did you answer that way in New York? A. Yes, sir.

Q. Under oath? A. Yes, sir.

Q. Was it true? (126) A. Yes, sir.

Q. Is it true now?

Mr. Tyne: I don't see anything inconsistent in that, if the Court please.

The Court: The inconsistency is that it was only for curiosity.

Mr. Tyne: For curiosity, that's all.

Q. Is it true now? A. Yes, sir.

Q. Well, is the story that you just told us on the stand true? A. Yes; I wasn't questioned there as far as—

The Court: No, you said that the only reason you went down was out of curiosity.

A. No, I went down—as I stated before.

The Court: You went down—

The Witness: To sell receipts for picking up liquor on the high seas.

Q. Do you ever remember being at a dock when a steamer came in with 25,000 cases on it? A. I don't.

Q. I beg your pardon? A. I don't.

Q. You don't remember? A. No, sir.

(127) Q. Do you remember being at a dock when a steamer came in with 60,000 gallons of alcohol loaded on it? A. No, sir.

Q. Now, then, you told us yesterday, I think, that when your whiskey buying combine broke up in 1933—is that right? A. Yes, sir.

Q. In other words, that ended with the advent of Repeal. A. It was the end of '32 or some time in '33.

Q. '33. Now, at that time Rutkin was still a partner, was he not? A. Yes, sir.

Q. And every partner was advised as to what his interest was, what he had coming to him and so forth, is that right? A. Yes, sir.

Q. And how was he advised as to that? A. He was advised by Mr. Kanengiser.

Q. And you were advised accordingly? A. I was advised by Mr. Kanengiser.

Q. And you were told what the status was of the other partners? A. Well, I was explained how much profit was being split up.

Q. And you know how much each partner had in the way of percentage? A. Yes, sir.

Q. And you knew how much each partner had left over, how (128) much he was to get and so forth and so on? A. Yes, sir.

Q. I mean all of those matters were referred to you, were they not? A. It was reported to everybody.

Q. All right. Now, then, isn't it a fact that prior, just prior to the time and all up from the time that Rutkin got in until the time when it was closed out in '32 or '33, that Rutkin in addition to working on the docks and being down at the docks with you, had sold liquor in Newark or New Jersey or New York or some place like that in the United States? A. I don't know a thing about it.

Q. You don't know about it. And isn't it a fact that when the combine was about to break up, your attention was called to the fact that there was due to the combine from customers of Rutkin which he had made on behalf of the combine, the sum of about $35,000? A. No, sir.

Q. And isn't it a fact that at a meeting of the partners you discussed that, and you said, "Well, that's what happens. We get some bad debts and we just have to wash it off." A. No, sir.

Q. You did have bad debts, didn't you, in that business? (129) A. We did but that didn't—that was just taken off the profits.

Q. Yes, that's right, but you did have bad debts. A. Yes.

Q. Yes. I mean you just told us a few minutes ago that sometimes you were fooled on credit. A. Yes, yes.

Q. Now, then, did you see any statement made up after the combine was concluded, showing how much percentage each one had left and how much dollars they had? A. I don't remember exactly but approximately.

Q. Well, you saw a statement. That's what I want to know. A. I did.

Q. Yes. You saw a statement. And did that statement have Rutkin's name on it? A. It didn't have anything as Rutkin's percentage was on it.

Q. It had Rutkin's name on it. A. There was no money coming to him.

Q. I beg your pardon? A. There was no money coming to him.

Q. That isn't the question I asked you. Did that statement have Rutkin's percentage on? A. Yes.

Q. And how was Rutkin referred to on that statement? A. 6 per cent.

(130) Q. I mean how did they designate Rutkin on there? A. Well, there was everybody's percentage on there.

(131) Q. What I am getting at, was the name James Rutkin written out and was your name Joseph H. Reinfeld written out or was it designated in some way? A. No, I don't really remember how that was done, I don't really don't remember whether it was each individual's name; it probably was.

The Court: Speak up, please.

A. I don't remember.

Q. It so happens that you and Rutkin have the same initials, J.R. A. Yes.

Q. And isn't it a fact that on those statements you were designated as J.R. and Rutkin as Jim? A. No, I wouldn't say—I don't know.

Q. After the combine broke up, you started Browne Vintners, didn't you? A. Yes, sir.

Q. Now, you told us yesterday that you started Browne Vintners by sending $250,000, was it, to a Mr. Bowers in Canada. A. Yes, sir.

Q. And who was Mr. Bowers? A. Mr. Bowers was a member of the United Distilleries in Vancouver.

Q. Had he been one of the men from whom you had been buying (132) liquor in Canada? A. United Distillers, yes.

Q. Well, you had been doing business in Canada with Bowers, had you not? A. No.

Q. You knew him, didn't you? A. No.

Q. You didn't know Bowers in Canada. Who in the combine knew him? A. I don't think any of them knew him.

The Court: How did you come to send him the $250,000?

The Witness: There was a Mr. Bell was part owner of the United Distillers who arranged it.

The Court: You knew Bell, did you?

The Witness: I did.

Q. Well, then, you made the arrangements with Mr. Bell, is that it? A. Yes, sir.

Q. And what was it that you told Mr. Bell you wanted? What arrangement did you tell him you wanted to make? A. The arrangements was made by all of us, that is, one of each combine.

Q. But I am talking now, Mr. Reinfeld—excuse me—about the conversation you had with Mr. Bell. (133) A. I said the three of us made the arrangements.

Q. With Mr. Bell A. I think it was Mr. Seaman and Mr. Davis and myself.

Q. All right. Where did this take place, in Canada? A. In Montreal.

Q. All right. Now, what was the arrangement that was made with Mr. Bell? A. The arrangement was that Mr. Kanengiser is going to transfer through a bank or something like that $250,000 and that he should be the nominee, and when he went, I think later on he told us to send this money to Mr. Bowers. I don't remember whether he wrote to us or he told us a few days later we should send it to Montreal to Mr. Bowers. I don't remember whether he wrote it, but to send it to Montreal.

Q. Now, whose money was this $250,000 that was to be sent? A. It belonged to the Seaman combination, the Reinfeld combination, the Kanengiser combination and a percentage belongs to Mr. Susskind.

Q. In other words, it was money that was left over from the liquor operation that had been going on several years, is that right? A. Yes, sir.

Q. Now, what was the purpose in sending it to Mr. Bell to give to Mr. Bowers? A. To send it to Browne Vintners so we could start Browne (134) Vintners.

Q. At that time had Browne Vintners been organized? A. Well, it was about to be organized.

Q. About to be organized? A. Yes.

Q. And the understanding was when the money got to Canada, it would be sent back from Canada to the United States? A. Yes.

Q. And what was the purpose of that? A. Well, we couldn't put it in the company in any other way.

Q. Why couldn't you put it in right here? You had it here? A. I don't know whether it was here.

Q. Well, you said Mr. Kanengiser was to send it from here. A. That's right.

Q. All right. Now, why did he have to send it to Canada to get it back to New York or to Newark? A. Well, the only reason is to send it to a nominee.

Q. Well, why was it necessary to send it to a nominee? A. Because none of them wanted to show the money.

Q. Why not? A. They couldn't say where they got it from.

Q. Why not? A. Well, at that time we didn't think we could.

Q. Well, why not? A. I don't know.

(135) Q. You mean you had an interest in a quarter of a million dollars and it was being sent out to Canada in order to get it back to Newark and you didn't think you could show your interest, and you don't know why? A. That is right; we didn't want to show it because it was money that we made at St. Pierre and on the high seas and we had no explanation.

Q. You mean money made illegally? A. That's right.

Q. And on which you didn't pay a tax? A. That's right.

Q. So you sent it to a man in Canada to send it back and start Browne Vintners? A. Yes, sir.

Q. And did he send it back? A. Yes.

Q. And then Browne Vintners was organized? A. Yes, sir.

Q. And when it was organized at the start, Mr. Bowers in Canada owned all the stock, that is, it was in his name? A. Yes, sir.

Q. So he was what was called a nominee or what other people call a front man for everyone at that time? A. Yes.

Q. Now, how long did Mr. Bowers continue to be a front man (136) for everybody in the United States who was interested in Browne Vintners? A. I guess two or three years.

Q. Two or three years? A. Yes, sir.

Q. He held all the stock all that time? A. Yes.

Q. Now, then, where did Browne Vintners first start to do business, where did you do business? A. 70 Pine Street.

Q. New York City? A. Yes, sir.

Q. You were a New York corporation? A. Yes, sir.

Q. And as soon as you started to do business, you started to handle liquor, did you not? A. Yes, sir.

Q. Legally? A. Yes, sir.

Q. And by handling liquor, will you just tell us what you did with it? A. We sold it to jobbers.

Q. And from whom did you get it, Mr. Reinfeld? A. Got it from different shipments from Scotland and France.

(137) The Court: Where you had the agencies?

The Witness: Yes, sir.

The Court: And you sold it to jobbers?

The Witness: Yes, sir.

Q. In other words, you bought it from distillers and so forth, is that right? A. Yes, sir.

Q. And you sold it? A. Yes.

Q. Now, in order to do that, you had to have a license in New York State? A. Yes, sir.

Q. What position did you occupy at that time in Browne Vintners?

The Court: You mean when it was organized?

Mr. Van Riper: Yes, sir, at the beginning.

A. As an officer?

Q. Yes, were you an officer? A. I don't think I was. I am not sure.

Q. Beg pardon? A. I am not sure; I don't remember whether I was or wasn't.

Q. You cannot remember whether you were an officer or not? A. No.

Q. Well, do you remember whether or not you were in the company's offices working there? (138) A. Oh, yes.

Q. On a full time basis? A. Yes.

Q. You were giving all your time and attention to it? A. Yes.

Q. In fact, you were running the company? A. No, sir.

The Court: How much of that company did you own?

The Witness: Well, at that time I owned a very small piece of that quarter of a million dollars.

The Court: This laddie up in Canada was what Mr. Van Riper elegantly calls a front man and he held the stock for other people?

The Witness: Yes.

The Court: Now, how much stock did he hold for you in Browne Vintners?

The Witness: He held all the stock.

The Court: For you?

The Witness: No, for all of us.

The Court: No, for you how much?

The Witness: Well, for me, for my group he held—for me, my group he held at that time 24 percent.

The Court: 24 percent.

The Witness: Yes.

The Court: How much of that was yours personally?

(139) The Witness: I would say about 8 or 9 percent.

The Court: And who were the others in your group who owned the rest of the 24 percent?

The Witness: My brother and my two brother-in-laws.

The Court: Your brother and two brothers-in-law and that was all of your group that owned the 24 percent of Browne Vintners?

The Witness: Yes, sir.

The Court: Now, who owned the rest of the stock for which the Canadian boys fronted?

The Witness: Well, there was 17 percent held by Kanengiser.

The Court: Yes?

The Witness: You see you cannot go by percentage. I will explain this percentage, 17 percent was by Mr. Kanengiser, 6 percent by Mr. Rutkin, 3 percent by Mr. Susskind but we split Mr. Rutkin's interest because he was short in the company, he did not have any money so we split 50 percent amongst ourselves, which we got about ten or eleven thousand dollars as far as my family is concerned.

Mr. Van Riper: Has your Honor finished?

The Court: Yes.

By Mr. Van Riper:

Q. Let me get that straight. You say you split Rutkin's interest when? (140) A. Well, right in the beginning.

Q. At the beginning of Browne Vintners? A. Yes, sir.

Q. And you split that among the members of your family? A. No, Kanengiser had 17 percent. He took 17 percent and a part of Mr. Rutkin's.

Q. What part of Rutkin's did Kanengiser take? A. According to the percentage, he might have got 2 percent out of it. We had 24, we may have got 3 percent.

Q. In other words, you split Rutkin's 6 percent? A. Yes, because he had no money then.

Q. You split Rutkin's 6 percent between the Kanengiser group and your group, your family group, right? A. And Mr. Susskind.

Q. Now, then, you said something a moment ago in answer to the Judge's question—I didn't understand clearly—about you getting maybe ten or eleven thousand dollars out of it.

The Court: He said the interests of his family were about ten or eleven thousand dollars.

Now, we will recess for five minutes. The Jury will be excused first.

(Short recess was taken.)

Q. Now, Mr. Reinfeld, do you recall a conversation with your partners just before the money went up to Canada about the fact that the money was going to Canada to Bowers or Bell? (141) A. I don't recall a conversation.

Q. Do you recall having a conversation with him about that fact? A. No, sir.

Q. You didn't? A. I am not—

Mr. Tyne: He said he didn't recall.

The Court: With whom do you mean?

Q. Did you have a conversation with Kanengiser about the money going to Bell or Bowers? A. I don't know which conversation you mean.

Q. Any conversation.

The Court: Did you have any conversation?

The Witness: Oh, yes, yes.

Q. Did you have a conversation with all of your partners about the money going to Bell or Bowers in Canada? A. Yes, they all knew about it.

Q. Yes, that's right.

Mr. Tyne: Well, can we have the partners identified, if the Court please? To whom does he refer?

Mr. Van Riper: Well, now,—all right.

Q. Did you have a conversation with Rutkin about it? A. No, sir.

Q. You didn't. Now, isn't it a fact that at one of the conversations which you had with Rutkin you talked about

the (142) money going to Canada, Rutkin asked you who the man was in Canada that was to get the money, and you told him it was a man by the name of Bowers, and he said, "Who is this guy?" and you said, "Never mind about that, your interest is being taken care of"? A. I knew Bowers when Mr. Bell told me about him.

The Court: No, no. Did you have a conversation with Rutkin?

The Witness: I didn't.

Q. Rutkin didn't say to you what I just asked you? A. No, sir.

Q. You are sure about that? A. Yes, sir.

Q. I see. Now, then, before Browne Vintners was formed, you took a trip to Europe on business, did you not? A. Yes, sir.

Q. And that business was for the purpose of trying to get brands, the agency for brands in this country for your new company that was about to be formed, is that right? A. Yes.

Q. Meaning the Browne Vintners Company? A. Yes.

Q. That's right. Now, do you know when it was that you went to Europe? A. What year?

(143) Q. Yes. A. I think it was in '32.

Q. 1932? A. Yes.

Q. Was that before or after Browne Vintners was formed? A. Before.

Q. Before it was formed. Do you know how long before? A. I don't know exactly, but probably a year or more.

Q. And who went to Europe with you? A. There was Mr. Seaman, Mr. Rutkin, Mr. Holtz, Mr. Susskind, I think, and myself.

Q. They were all then partners of yours in one way or another, were they not? A. Yes, sir.

Mr. Van Riper: May I have these marked for identification, please? These are a half dozen photographs and can be marked as one as far as I am concerned, if there is no objection.

The Clerk: Mark it Defendant's Exhibit 1 for identification.

The Court: Mark them as one exhibit and then if you want to particularize any one, we can give it a letter.

Mr. Van Riper: They will all have to stand together or fall together.

Mr. Tyne: This is a picture on board a ship, or (144) something like that, Mr. Van Riper?

Mr. Van Riper: I don't know, frankly. That isn't a smart answer, I would have to look at them to answer it correctly. I don't think any are on board a ship, that is the reason I make that reply. It is not one of those kind that you send home to the folks.

Q. Will you look at this, please, Mr. Reinfeld, referring to Exhibit D-1 for identification, look at them one at a time, I guess, and tell me whose photograph that is. A. Well, it is the man I mentioned, my brother Sam, which he wasn't on this trip.

The Court: Where was this taken?
The Witness: I don't know.
The Court: Your brother Sam is there?
The Witness: Yes.
The Court: But he wasn't on the trip?
The Witness: He wasn't on the trip.
The Court: All right, mark that D-1A.

(Marked Exhibit D-1A for identification.)

The Court: Now, here is another one.

Joseph H. Reinfeld—for Government—Cross

Q. I show you this one; who are these three men in that photograph? A. One, Mr. Seaman, Mr. Holtz, Mr. Rutkin and myself.

Q. I am sorry, I am wrong, there are four men. Where was that taken? Wasn't it taken when you were abroad on this trip? (145) A. It probably was.

Q. Now, I show you another photograph of four men.

The Court: Mark that B.

(Marked Exhibit D-1B for identification.)

Q. Who is in that? A. That is the same group, but where it was taken, I don't know.

Q. Well, it is apparent that it was taken at a track, a race track, isn't it? A. I haven't looked at it.

The Court: It might be a ball field, there is a grandstand in the rear.

Mr. Van Riper: If we were in New York, I would say it was but I—

A. I couldn't tell you, Mr. Van Riper.

The Court: Mark that C.

(Marked Exhibit D-1C for identification.)

Q. I show you another picture of five men standing in front of what appears to be an airplane; that is Rutkin and yourself, is it not (indicating)? A. Yes.

Q. And who else? A. Mr. Susskind—the five people I mentioned.

Q. And that was taken where, do you know? A. I don't know; I would have to see it.

(146) Q. That was taken where, do you know? A. I don't know, I would have to see it.

Q. I beg your pardon? A. I don't know.

Q. Was it taken some place abroad while you were on this trip? A. I couldn't say for sure, I have nothing to go by.

Q. I see.

The Court: Mark that another letter.

(Marked Exhibit D-1D for identification.)

Q. Now, here is the last one of four men, who are they? A. Well, that is Mr. Seaman, Mr. Susskind, Mr. Rutkin and myself.

Q. Do you know where that picture was taken? A. No, sir.

Q. Was it taken while you were abroad on the same trip? A. I don't know.

Q. You don't know. It could have been? A. Could have, yes.

Q. All right.

The Court: Mark this.

(Marked Exhibit D-1E for identification.)

Q. Now, who paid the expenses of that trip? A. Mr. Kanengiser.

Q. Out of his own money? (147) A. No, the company's money.

Q. The company's money. All that Mr. Kanengiser did was to give— A. I am sorry, I shouldn't have answered it that quickly, I am not sure; mine was paid, I assume Seaman's was paid; whether Rutkin and Holtz' and Susskind's, it probably was paid, but I am not sure.

Q. Well, was there any reason to believe that it wasn't paid? A. Yes.

Q. There was. What was it? A. Seaman and I were going on business and they were just going on pleasure.

Joseph H. Reinfeld—for Government—Cross

Q. Well, now, Susskind was a partner of yours, was he not? A. He was.

Q. And Rutkin was a partner of yours, was he not? A. He was.

Q. And you were all interested in the same thing, were you not, namely getting agencies for various brands? A. Yes.

Q. And you all went together on the boat? A. Yes.

Q. And you all came back together on the boat? A. I don't remember; I believe we did, but I am not sure.

Q. And you all traveled together over there? (148) A. Not everywhere, no.

Q. Well, sometimes one would take a little side trip or something like that? A. Seaman and I did most of the traveling.

Q. I beg your pardon? A. Seaman and I did most of the traveling.

Q. You stayed generally at the same hotels? A. I could remember London that we stayed at the same hotel.

Q. I see.

The Court: Where did you stay there?

The Witness: At the Savoy.

Q. How long were you over there? A. I don't remember.

Q. Well, can you give me an idea? A. It might be a month.

Q. It might be a month. And you secured while you were over there several agencies, did you not, the agencies for several brands? A. No, sir.

Q. You did not? A. No, sir.

Q. Didn't Browne Vintners afterwards take on the agency for several brands as a result of your trip to Europe in '32? A. We did; not as a result, they were just going around to (149) see people in trying to get agencies.

Q. Sort of a good will trip? A. Well, try to get agencies, yes.

Q. I see. All right. Well, now, then, a little later on, after you came back, Browne Vintners was formed, let's get back to that, was formed, wasn't it? A. No, sir.

Q. It wasn't formed after you came back? A. No, sir.

Q. When was it formed? A. In October '33.

Q. That was some time after you came back from Europe? A. No, we came back in '32; we left in '32 and came back in '32.

Q. When Browne Vintners was formed, one of the questions I asked you just before the recess was who was running the company when it first started at 70 Pine Street, New York? A. E. T. Browne.

Q. And when did Mr. Browne come into business relationship with you first? A. Right from the beginning, from October on.

Q. From the beginning of what, the Browne Vintners? A. October '33, the formation of Browne Vintners.

Q. Now, how much of an interest did he have in Browne Vintners? (150) A. 25 per cent.

Q. 25 percent. Did he have any interest in the money that went to Canada? A. No, sir.

Q. He did not. He put his money in when? A. He didn't put any money in.

Q. How did he get 25 percent? A. For his ability to form the company and run the company.

Q. Now, then, he is the second man that became a partner of yours without any money, is that it? Rutkin was first and Browne was second? A. Well, it was an understanding and—

Mr. Tyne: Just a minute. It was an understanding, it hadn't been testified to, Rutkin was never interested in Browne Vintners according to the witness' testimony.

The Court: No, the question might be slightly confusing.

Mr. Van Riper: I said a partner.

The Court: I think what he means is that Rutkin came in as a partner in your first bootlegging venture without any money and this lad came in in the legal venture without any money.

Is that right?

The Witness: That's right.

Mr. Tyne: As a stockholder.

(151) The Court: He got 25 percent of the stock for his know-how?

The Witness: He was E. T. Browne Drug Company, and to leave his place of business—he was appointed to run it.

The Court: You gave him 25 percent for his know-how and for running the business?

The Witness: He asked for 25 percent—yes.

Q. Now, did he become a stockholder of record? A. Yes.

Q. For 25 percent? A. Yes, sir.

Q. And when was that stock issued to E. T. Browne? A. I don't remember exactly. It was formed in October.

Q. Well, about how soon after was the stock issued to him, do you know? A. I don't remember.

Q. Well, did he own stock in his name at the same time that Bowers of Canada owned the stock for all the rest of your people? A. I believe he did, but I am not sure.

Q. Now, then, he worked at Browne Vintners' office A. Yes, sir.

Q. Who else worked there full time? A. There was Mr. Davis, Mr. Lentz, myself, Mr. Browne and (152) Mr. Newman, who was Browne's partner. The two of them got the 25 percent.

Joseph H. Reinfeld—for Government—Cross

Q. Browne and Newman had 25 percent between them, you mean? A. Yes.

Q. I see. And did Newman have stock in his own name? A. Yes.

Q. Did he ever pay any money for it? A. No. That was the 25 percent that E. T. Browne got and split with him.

Q. All right. Do you know how many shares of stock Newman had in his own name? A. No, sir.

Q. Did his stock ever increase from the time he first came in until the end? A. That stock was bought by the company about six months later.

Q. Newman's stock? A. And Browne's stock.

Q. And Browne's stock. About six months when, after the company was organized? A. After the company was—well, it was organized in October, we started doing business in December and I believe that Browne resigned in about, in the spring of '34, which was around May or something like that.

Q. And then you bought his stock? (153) A. The company bought the stock.

Q. The company bought the stock in the company treasury? A. Yes, sir.

Q. And did they buy Newman's stock at the same time? A. Well, we bought Browne's stock because they were partners in the drug business, too.

The Court: The 25 percent?

The Witness: Right.

Q. Then Browne got out of the company altogether? A. Yes, sir.

Q. As a stockholder and an officer? A. Yes, sir.

Q. He had been in about six months? A. Yes, sir.

Q. And how much money did you give him for his stock? A. $50,000.

Q. $50,000? A. Yes, sir.

Q. He got for six months? A. Yes, sir.

Q. Now, what had he contributed in that time? A. Well, it was very disappointing; I didn't know and nobody else knew that Mr. Browne had sort of drinking habits; he was on the wagon about five years—and Mr. Newman told me this after—and it seems these jobbers that came from (154) all parts of the country to do business just complained, it went on for a few months. I spoke to Browne a few times, Davis spoke to him, Lentz spoke to him—

The Court: Speak up.

A. (Continuing.) Mr. Lentz spoke to him, and it seems he couldn't help himself, he admitted it, and Mr. Newman was away and we didn't want to do anything until Mr. Newman comes back. He was in Florida. When he came back, we told Mr. Newman the story and he told us that he feels very bad about it and that Mr. Browne has been on the wagon for five years but something happened, he has been drinking and as far as he is concerned, if Browne gets out he is going to remain, just working. So we paid out Browne $50,000, I think during two or three years on so much a month or something.

Q. But you made the contract with him when he got out in April or May, whenever it was? A. Yes.

Q. Right. Now, has Browne been associated with you in your bootlegging activities? A. No, sir.

Q. He hadn't been, he had been, so far as you knew, a perfectly respectable businessman?

Mr. Tyne: I object to the characterization and the contrast that is being attempted to be made.

(155) The Court: No, I don't think there is any particular contrast there, bootlegging was not a respectable business and the drug store business

was a respectable business. I don't think there is any particular derogatory conclusion to be drawn from that comment of the Attorney General.

Q. That is so, is it not, Mr. Reinfeld, that as far as you knew Browne was a perfectly respectable businessman? A. Yes, sir.

Q. And Browne's name was used on the application of Browne Vintners when it first made its application for a permit in New York State, was it not? A. Yes, sir.

Q. And the stock ownership was supposed to be then, according to those papers, in the name of Bowers of Canada? A. Yes, sir.

Q. Was it ever revealed to the New York State Liquor Authorities that Bowers of Canada was a nominee or front man? A. No, sir.

Q. It was not. And it was because the real owners of the stock did not want to be disclosed that you used Bowers of Canada as a front man, isn't that so? A. Yes, sir.

Q. All right. Now, then, after Browne got out, who (156) became president? A. Mr. Owen.

Q. Mr. Owen. Had he been there while Browne was there? A. Yes, sir.

Q. And how long had he been associated with you? A. Browne brought him in.

Q. Browne brought him in. Now, what were Mr. Davis' duties in Browne Vintners? A. He was selling.

Q. And what were Mr. Lentz' duties? A. Sales.

Q. And what were your duties? A. Well, in the beginning I was making up prices and also helping in sales. I travel for the company, try to organize jobbers to buy.

Q. Who did the buying? A. Well, there was a buying department; I don't remember the fellow's name.

Q. You don't remember who was in charge of the buying? A. The buying is just what we call—we all decided what we need and then it is wired to France or England to ship. That is done by a clerk.

Q. By a clerk. Are you saying that the buying is not important? A. Yes, but we decided, we all decided what we will need (157). according to business and according to what the jobbers wanted.

Q. Well, who decides what price you will pay for it? A. That is one price, when you have an agency there is a price put on it and the supplier either raises or lowers it but we can't, there is no dealing in it.

Q. You mean there is no bickering, there is no dickering about the price? A. No.

Q. Does that go also for the selling of it so far as you people are concerned? A. Yes.

Q. You had one price? A. We had one price.

Q. And there was no bickering or dickering about the price with your customers? A. Well, yes, that was Mr. Lentz' department, that if a customer wanted to buy a big quantity, an especially big quantity, we might give him 2 percent off.

Q. And didn't you and Rutkin have a discussion about that business of giving—cutting the price to customers of Browne Vintners? A. No, sir.

Q. Do you remember a time when Rutkin had a discussion with you about kickbacks by Browne Vintners? (158) A. No, sir.

Q. Do you remember a time when Rutkin talked with you about what is becoming of the fund that is being built up to kick money back to customers? A. What year are you talking about?

Q. At the same time, after Browne Vintners was formed? A. No, sir.

Q. What is your answer? A. No, sir.

Q. You don't remember.

Mr. Tyne: No, he said, "No, sir". It is a categorical denial.

Mr. Van Riper: My question is, "Do you remember it?" and his answer is no, he didn't remember it.

The Witness: I remember Rutkin warned me about kickbacks.

Q. I didn't say "warn you", did you have a discussion with Rutkin and did Rutkin discuss with you about building up a fund in a company to use for kickback money to customers? A. Mr. Rutkin never spoke—there was no discussions between Rutkin and me about Browne Vintners.

Q. No discussion about Browne Vintners? A. No, sir.

Q. At any time? A. Except now and then if he met me he spoke about it, but (159) not about business, he asked me how business is or something like that.

Q. You say if he met you, you mean by that outside of the office? A. He used to come up to the office, too, sometimes.

Q. He used to come up to the office? A. Yes, sir.

Q. When he came up to the office, who did he see? A. Well, he would see me, he might see Mr. Lentz, he might see Mr. Davis, but he came up to see me.

Q. And he came up frequently to see you? A. No.

Q. How often would you say that he did come up to see you? A. Well, I might have seen him in a month three or four times and then didn't see him for six months.

Q. And outside of the time when he was unable to come to see you because of his situation up in Boston, where he was incarcerated for eight or nine months, isn't it a fact that he used to come to see you regularly two or three times a week? A. No, sir.

Joseph H. Reinfeld—for Government—Cross

Q. Now, when he came to see you, you had—you moved from 70 Pine Street, by the way, to where? A. To 30 Rockefeller Plaza.

Q. And you were in three different buildings up there at (160) Radio City, were you not? A. We moved from one to another.

Q. Yes. A. Yes.

Q. At different times you were in three different buildings? A. Yes.

Q. And you had very large offices in all A. Not very large, no, sir.

Q. Well, you had a suite of offices with several rooms, did you not? A. The first office was about 2,000 square feet.

Q. All right. You had several rooms? A. Yes, there might have been a half dozen rooms, yes.

Q. And then as it grew, you had larger offices with more rooms? A. Yes.

Q. Now, you, of course, had a private office, did you not? A. I did.

Q. And at that time did you hold a title in the company? A. I did.

Q. What was your title? A. Treasurer.

Q. And when did you become treasurer? A. I don't remember the year; it might have been '34, '35. I think it was in '34 or '35.

(161) Q. You say it was at least '34, which would be over a year after the company began business, is that right? A. I think it was later.

Q. You think it was later? A. I don't remember exactly.

Q. Was that the first office you held in the company, treasurer? A. I am not sure. I thought I held some office in the beginning, but I am not sure.

Joseph H. Reinfeld—for Government—Cross

Q. Now, did any of the people in the company who were there on full time basis, working all the time, own as much stock in the company as you did? A. Well, I couldn't tell what Mr. Davis owned because he was with a group. I couldn't tell what Mr. Lentz owned, but I do know later on when they put more money out, I think it was late '35 that there was certain percentages set up.

Q. Now, Davis was with the group when, as far as Browne Vintners was concerned? A. Right from the beginning.

Q. And do you mean that Davis' money was covered by this $250,000 that went up to Canada? A. Yes, sir.

Q. Well, now, that $250,000 capitalization was increased very shortly after the company started, wasn't it? A. I think there was about 100 or 125, something like that, (162). put in within another year, yes.

Q. When did people start taking stock in their own name in the company, stockholders? A. Well, it was issued in '35.

Q. In '35? A. Yes.

Q. Is that when Bowers got out, as far as owning stock was concerned, on the record? A. I don't remember exactly, but we issued stock at that time.

Q. Well, was that additional besides what Bowers had, or was it Bowers' stock being transferred to someone else A. I don't remember just how it was done.

Q. Well, there did come a time when Bowers got out from the stockholdings, did he not? A. Yes.

Q. He ceased to be nominee or front man? A. Yes.

Q. All right. Now, at that time who took over the stock on the record? A. Different members of the firm.

Q. Well, now, will you just give us the names, please, of the people who took over the stock? A. Bowers' stock was still held by nominees after that.

Q. You mean that Bowers' stock continued to be held by other (163) front men? A. Yes.

Q. Who were the front men after Bowers? A. Bowers' stock, he got sick, and I approached Mr. Norman Levin in Vancouver to take it over.

(164) Q. And who was Mr. Norman Levin? A. He is a brother of my son-in-law.

Q. A brother of your son-in-law? A. Yes, sir.

Q. And what did you expect Mr. Norman Levin to do? A. To be the nominee instead of Bowers.

Q. Well, Bowers didn't need any nominee, did he? A. He died.

Q. Bowers died? A. Yes, he was sick. That's why I made the change.

Q. But you made the change before he died. A. Yes, sir. He was very sick and we thought we will make the change.

Q. Well now, how much stock did Norman Levin take over? A. He took over the $250,000.

Q. All of the stock that Bowers had? A. I think so.

Q. And Norman Levin was then acting as front man for whom? A. Well, you couldn't just say for whom because the stock wasn't split up. There were stockholders, and there were some stockholders through nominees and later on there was more nominees.

Q. Did Norman Levin at one time take over what was originally $250,000 worth of stock? A. Yes, sir.

(165) Q. And he held it for somebody else? A. Yes.

Q. For whom was he holding it? A. The same group.

Q. The same group that started out? A. Yes, sir.

Q. Including yourself. A. Yes, sir.

Q. Now, when Norman Levin became the nominee in place of Mr. Bowers of Canada did that appear on the books of the company any place? A. As nominee?

Q. Yes. A. Yes. There was a book kept.

Q. Who kept that book? A. The accountant.

Q. You mean Mr. Sam Cohen? A. Mr. Sam Cohen, and Mr. Davis, Mr. Lentz.

Q. Well, that wasn't in the official books of the company at the company office, was it? A. It might have been at the company's office.

Q. You say it might have been? A. It wasn't on the official books.

Q. No, not on the official books. Was the fact that Norman Levin of, what did you say, Vancouver? (166) A. Vancouver.

Q. (Continuing.) Became nominee in place of Mr. Bowers of Canada ever revealed to the New York State Liquor Authority? A. No, sir.

Q. Now then, did Norman Levin take all the stock in his own name or did he take it in other names? A. No, it was held by him and his two sisters.

Q. Do you know what the names of the sisters were? A. Nellie Levin and Sally Levin.

Q. Was one of the sisters names Matoff or Maltoff? A. Yes. Nellie Maltoff.

Q. Instead of Nellie Levin it was Nellie Maltoff? A. Yes.

Q. Neither one of these people, Norman Levin or Sally Levin or Nellie Maltoff had any interest in the stock although it was in their name, is that correct? A. That's right.

Q. And you arranged for all of these people to hold the stock, did you not? A. That is without the permission—

The Court: No, did you arrange it no matter with whose permission?

The Witness: I did.

Q. Then how long did they hold it? (167) A. Until the end.

Q. Until the end? A. Until 1940.

Q. Until the company was sold. A. Yes.

Q. And all during that time do you know what year they had the stock in their name? A. I don't know.

Q. Would you think it was '34 or '35? A. I would say close to '35.

Q. So that approximately five years they held the stock in their name? A. Yes.

Q. Now, for whom were they holding it during those five years? A. Well, for the same members.

Q. For the same people? A. Yes.

Q. In other words, whoever had an interest in the $250,000 that went to Bowers in Canada in '33 had an interest in the stock which the Levins were fronting and which they sold in 1940, is that correct? A. That's right.

Q. Now, who else became the holders of front stock in Browne-Vintners? (168) A. I don't remember all the names.

Q. Will you try and think of them? A. Yes. Mr. Newman.

Q. Mr. Newman who came in with Mr. Browne, that's right? A. Yes, sir.

Q. And he had a part of Mr. Browne's 25% stock interest at the start? A. Yes.

Q. Which stock interest was bought in by the company? A. Yes.

Q. Now then, when did Mr. Newman become the owner of front stock? A. Might have been 1936 or '37, I don't recollect the time.

Q. Do you know how he became the owner? A. How?

Q. Yes. What the circumstances were under which he became the owner of front stock. A. Well, there was some

cash money coming in from the existing parties that the stock was held by nominees before he continued.

Q. Do you mean by that—excuse me, I don't want to interrupt your answer. Have you finished? A. Yes.

Q. Now, do you mean by that to say there was money coming in that you were increasing your capitalization, is that what (169) you mean? A. Yes.

Q. An additional stock was being issued? A. Additional stock being issued.

Q. New stock for money, for cash? A. New stock.

Q. Now then, who arranged with Newman to act as a front man in holding the stock? A. Well, if I remember correctly I believe it was Mr. Lentz.

Q. Didn't you talk to Newman about it? A. Newman spoke to me about it.

Q. And didn't Newman ask you if it was all right? A. He did.

Q. And you told him that it was? A. I did.

Q. Do you know how many shares of stock Newman was fronting? A. Well, I don't know what year and I wouldn't remember how much stock because money was coming in during the whole time of seven years that we were in business.

Q. Do you remember how much stock Newman had in his name when your company was sold in 1940? A. No.

Q. Would you say it would be 73 shares? A. Yes.

Q. Does that sound about right to you? (170) A. Yes, it does.

Q. Now, if it was a fact that Newman had 73 shares of stock in his name at the time the company was sold in 1940 how much of that 73 shares was front stock? A. I believe all of it.

Q. Do you think it was all front stock, and for whom was it being fronted? A. Well, I believe it was fronted for Mr. Lentz a part of it. The other part was fronted

for some new people or the same group that was putting it up, that actually put up the money before.

Q. Now, Mr. Reinfeld, I want to be fair to you, I believe you said you believed it was fronted for Mr. Lentz, is that right? A. Yes.

Q. Do I take it from that you are not sure for whom it was being fronted? A. The reason I say that when Mr. Newman asked whether—this amount, he didn't say how much, he said "Mr. Lentz gave me some money, is it all right". I said yes.

Q. So then you are not sure for whom it was being fronted, that's correct? A. That's right.

Q. Now then, part of the time that Mr. Newman held front stock he was president of the company? (171) A. He was.

Q. And was his ownership of front stock and his acting as front stock ever revealed to the New York Liquor Authorities? A. I don't think it was.

Q. Now, who else held front stock? A. Mr. White.

Q. Bob White they called him? A. Yes.

Q. Who was he, by the way? A. He was an advertising man.

Q. For Browne Vintners? A. Yes.

Q. And before that who was he? A. Well, I don't know. I met him through Mr. Owen. He had a farm in Georgia and lived there and was in the stock exchange or something.

Q. Do you know what business he was engaged in before he came to Browne Vintners? A. Only from what Mr. Owen told me.

Q. He worked for the Government, didn't he? A. For the Government?

Q. Yes. A. First time I heard that.

Q. You didn't know that? A. No, sir.

(172) Q. You didn't know that White had something to do with customs for the Government? A. No, sir. I know he was hunting for 14 years.

Q. He didn't tell you what he was hunting for. A. Oh, he did. He used to show pictures and so on, hunting in Russia and everywhere.

Q. Now then, how many shares of stock did Mr. White front? A. I couldn't say.

Q. Do you know how much stock he held in his name? A. Well, I couldn't say offhand just how much. He put some of his own money in.

Q. His name is Harold White? A. That's right.

Q. Harold A. White? A. Yes.

Q. Would it help to refresh your memory any if perhaps I suggest it was 1940 at the time the sale was made, he owned 108 shares, would that seem right to you? A. Of all stock, yes, it seems all right.

Q. Of all stock in his name? A. Yes.

The Court: But that wasn't all front stock.

The Witness: No.

Q. If it is true that in 1940 at the time of the sale White had 108 shares in his name how much of it do you think was (173) front stock? A. I couldn't say exactly, but we have a list of all that.

Q. You don't know? A. I don't know. I couldn't say just how much.

Q. Now then, did you arrange with Mr. White to act as front? A. No, it was arranged by Mr. Cohen.

Q. Sam Cohen, your accountant? A. And Mr. White asked me about it and I told him it was all right.

Q. In other words, before Mr. White agreed to do it he talked with you? A. Yes, sir.

Q. And you told him it was all right? A. Yes.

Q. Now, do you know for whom Mr. White was fronting? A. No, sir.

Q. You do not. Now, will you be good enough to tell us who else held front stock? A. I cannot remember. There was a few of them but I cannot just remember who it was.

Q. Did some people by the name of Silverman have stock? A. Yes, sir.

Q. And was that front stock that they had? A. I believe some was.

Q. And how many Silvermans were there holding stock? (174) A. Oh, one or two I believe.

Q. Well, could there have been three? A. It could be, yes.

Q. And could they have been Moe Silverman and Phillip Silverman and David Silverman? A. Yes.

Q. And do you know just how much each one of them had? A. I think ten thousand, something like that.

Q. You don't mean ten thousand shares.

The Court: $10,000.

A. $10,000.

Q. Shares were selling at about a thousand dollars each? A. Yes.

Q. And each one had ten shares? A. I think so.

Q. Was it possible that one of them could have had twenty? A. It could have been.

Q. Was that all front stock? A. I don't know.

Q. You don't know? A. No.

Q. Now, who were they—I mean in relationship to you, who were the Silvermans A. They were no relation to me.

Q. I don't necessarily mean blood relation or marriage (175) relation but contact with you—had they had any contact with you? A. Yes.

Q. Business relations.

Colloquy of Court and Counsel

The Court: Mr. Van Riper, I have been wondering for some time now what relevancy this has to the charge.

Mr. Van Riper: Your Honor please, I think it is very relevant because it is front stock that we claim an interest in. I think it is relevant to show the policy of this company and how many shares were being fronted.

The Court: You claim Rutkin had an interest in all the front shares?

Mr. Van Riper: I don't claim Rutkin had an interest in all of the front shares but we claim he had an interest in stock which was being fronted for him.

The Court: By these people, the Silvermans? What I don't understand is just how it is relevant to show that Silverman had stock or somebody else had stock unless Rutkin's contention is that he owned part of it.

Mr. Van Riper: Our contention is that we owned an interest, sir and that Reinfeld was taking care of that interest and Reinfeld was taking care of the fronting of that stuff for us.

The Court: Then your suggestion is that this stock was fronted for Reinfeld.

(176) Mr. Van Riper: It is entirely possible for Reinfeld.

The Court: I am not going to deal in possibilities.

Mr. Van Riper: What I am trying to find out from this witness is for whom this stock was being fronted.

The Court: Is it your contention that it was being fronted for Rutkin because—

Mr. Van Riper: Our difficulty is this, your Honor please, and I think we are going to be able to prove

that we invested the money with Reinfeld and that we had a stock interest and that it was to be fronted for us. Therefore it seems to me most material that we show how much stock was being fronted and by whom it was being fronted and for whom.

The Court: Are you contending that the stock which was bought was issued after the organization of Browne Vintners and which was purchased with new money coming in was part of Rutkin's money?

Mr. Van Riper: Yes, sir. We are contending that Rutkin had put in new money and had an interest in some of the new stock that was issued in the change of capitalization.

The Court: Oh well, that's all right.

Q. Now then, I was about to ask you, and did ask you, I think, Mr. Reinfeld, who the Silvermans were as far as you were concerned. You had business relationships (177) with them? A. Yes, sir.

Q. As a matter of fact, aren't the Silvermans related in some way to one of your brothers? A. Yes.

Q. Now, is there a man Ruben who had fronted stock? A. Yes.

Q. Moe Ruben? A. Yes.

Q. Do you know how much stock he had A. I don't know, not offhand.

Q. Was that all fronted stock? A. I don't know.

Q. And what is Ruben's connection with you? A. Well, he is married to a sister of mine.

Q. And was the arrangement made with Ruben to front by you? A. I don't think so.

The Court: Well, was Ruben fronting for Rutkin?

The Witness: No.

The Court: Were the Silvermans fronting for Rutkin?

The Witness: No.

The Court: Do you know for whom they were fronting?

The Witness: Well, you see money was put up—

(178) The Court: Do you know for whom they were fronting?

The Witness: No, sir.

Q. Then you cannot tell whether they were fronting for Rutkin or not, can you? A. I could say that they did not front for Rutkin.

The Court: Well, if you don't know for whom they were fronting—

The Witness: I am positive. Well, we made out a list when the Company was liquidated.

The Court: No, no, when this other money came in.

The Witness: It couldn't have been for Rutkin because at the time I recall who it was from.

The Court: No, don't draw any conclusion. If you know a thing tell it and why.

Q. Was Silverman fronting for Zwillman? A. Yes.

Q. Were they fronting for Stacher? A. Yes.

Q. Were they fronting for Kanengiser? A. It is possible, yes.

Q. Were they fronting for Facher? A. Yes.

Q. Stock was being held for them A. Yes.

(179) Q. Stock was being held for Holtz? A. Yes.

Q. Stock was held for Holtz? A. Yes.

Q. Now, Silvermans, you just told us had either 30 or 40 shares of stock which were being fronted? A. Yes, sir.

Q. And you say they were fronting for Zwillman? A. I am not sure.

Joseph H. Reinfeld—for Government—Cross

The Court: Why do they have to front? Why were they fronting?

The Witness: Because some of the stockholders had cash money and they didn't want to put it on their name because they didn't have anywheres to declare it.

The Court: That's true of Stacher and Zwillman and your brother and all those?

The Witness: Part of it, yes. Like let's say in the beginning Mr. Kanengiser came in.

The Court: No. Not in the beginning, the new money.

The Witness: Well, Mr. Kanengiser put in new money. All the money went in we knew who it belonged to.

Q. That is you had some private arrangement as to whom it belonged to? A. Yes.

(180) Q. But the official books of the company didn't know it. A. No, but Mr. Davis knew it and Mr. Lentz knew it.

Q. And there was a requirement that you divulged to the New York State Liquor Authorities, the true ownership of stock? A. I am not very well versed on that. I don't know what the percentage was as a whole.

Q. Now let me ask you about that, Mr. Reinfeld.

The Court: No, I don't want to try any case except this one.

Mr. Van Riper: No, but I want to test the witness' credibility on this very important question of who was fronting for whom.

The Court: Let's get to that.

Q. Now, you knew that somebody was fronting for Zwillman. A. Yes, sir.

Q. When did you first find that out? A. When he put the money up.

Q. Which was when? A. Well, during those seven years. I don't know which year you are referring to.

Q. In other words, somebody was fronting for him all along? A. Yes, he put the money up.

Q. Now, do you remember having a conversation with Mr. Dewey in New York? (181) A. Not with Mr. Dewey.

Q. Mr. Dewey was District Attorney in New York during the time the Browne Vintners was running? A. Yes, sir.

Q. Did you have a conversation with any members of Mr. Dewey's staff in his office? A. I did.

Q. And did they inquire of you whether or not Mr. Zwillman owned some of this stock of Browne Vintners? A. I don't think so.

Q. Beg pardon? A. I don't think so. I don't remember.

Q. Isn't it a fact that you told Mr. Dewey's assistant or whoever it was in his office that interrogated you, that you told him Mr. Zwillman didn't own any of the stock? A. I don't remember.

Q. Isn't it a fact that you told Mr. Dewey's office in answer to their questions that Rutkin didn't own any?

Mr. Tyne: Just a minute, your Honor. This goes pretty far afield. Is counsel going to bring in Mr. Dewey?

The Court: No, he is not. He is testing this man's credibility. I will let it go for awhile but not too long.

(182) Q. Now then, did your brother-in-law Holtz front stock or was stock fronted for him? A. Was his money he had in his wife's name and part of it was front, the biggest share of it he had in his wife's and in his own name.

Q. When you say part of it was fronted— A. The part put up in cash was fronted.

Q. Fronted for him? A. Yes.

Q. But he himself wasn't fronting for anyone else? A. No, sir.

Q. Is that right? A. That's right.

Q. Now, were you fronting any stock? A. I was.

Q. You were? A. Yes.

Q. And for whom were you fronting stock? A. I don't know.

The Court: What do you mean you don't know?

The Witness: You see, your Honor, I was trying to explain it before but money was put up during the period of a year and stock wasn't issued and notes were given.

The Court: Well, who would put the money up?

The Witness: The people I mentioned, the partners (183) of the three groups.

The Court: When you fronted for somebody, whom did you front for?

A. I didn't know until we split the money up. I owned myself about $450,000 worth of stock and there was $17,000 that was front money. I don't know whose it was.

The Court: Who gave you the $17,000 to front with?

The Witness: They didn't give it to me. It might be the accountant deposited it.

The Court: And then the stock was issued to you without you knowing for whom it was, is that it?

The Witness: Yes.

Q. Who handled all this, Cohen? A. Yes, sir.

Q. Cohen would put stock in somebody's name and when he put stock in your name you didn't know about it, is that

what you mean? A. Yes. I say $17,000—he might have told me at that time.

Q. I beg your pardon? A. He might have told me at the time, I don't remember.

Q. Now, then, when the split-up came you found out that you were 17 shares over, is that right? A. Yes.

Q. And that represented $17,000 in the sale price? A. Yes.

(184) Q. Well, as a matter of fact it represented more than $17,000, didn't it—that was the cost price. A. Yes.

Q. And the sale price was about what, $2,500 a share? A. Nearer to $3,000.

Q. So that 17 shares amounted to around $50,000, is that right? A. Yes, about $45,000.

Q. Fifty thousand. And what did you do with that $50,000 that came to you that you were fronting for? A. Well, when the company was sold the accountant made up who this cash belonged to and took it from me. He would take it from the owner and divide it up to the people that were the real owners.

Q. That were supposed to get it? A. That's right.

Q. Now, would he take $50,000 or approximately what that figure was, representing 17 shares from you? A. Yes.

Q. In cash? A. Yes.

(184A) Q. Now, I don't want to misrepresent you. Do you mean by that that you handed it to him? A. Well, I don't remember exactly what happened but I know—

The Court: It wasn't paid by check, was it?

The Witness: No, sir.

The Court: You say that the money was turned over, $50,000 was turned over to Cohen, who was the accountant-auditor, and that represented the money you were fronting for?

The Witness: Yes, sir.

The Court: And you don't know for whom you were fronting?

The Witness: No, sir.

Q. Now, when did you find out from Cohen, Mr. Reinfeld, that you were fronting? A. I knowed it when the company was liquidated and there was some $17,000 more than I put up.

Q. But I mean at what stage in the liquidation. When it came time to get your money? A. Yes, when I get the money, Cohen showed me that that $17,000 didn't belong to me.

Q. Now, by the way, in this liquidation, how much money did you and members of your family receive from the liquidation? (184B) A. I had an investment of four hundred and fifty or sixty thousand dollars.

Q. And you received for that— A. I received—

Q. About how much? A. Well, I think we paid out two ninety for one. That would be about a million something.

Q. Well, 450— A. Two hundred thousand or something like that. I don't remember offhand.

Q. Excuse me. Four hundred and fifty thousand investment would mean four hundred and fifty shares, wouldn't it? A. Well, it would mean four thousand, five hundred shares.

Q. I mean forty-five hundred shares. A. Yes.

Q. Forty-five hundred shares; that's what you had. A. Of preferred.

Q. Preferred. A. These were all preferred.

Q. How about the common? How about the common? A. Of the common I had four hundred and fifty shares.

Q. Four hundred and fifty; that's right. And they really figured this distribution on the basis of your common stock, didn't they, so much a share? Isn't that the way they figured it? (184C) A. No, on the preferred stock.

Q. I see. A. On the investment.

Q. All right. A. Preferred stock.

Q. Well, you got yourself, didn't you, in the neighborhood of a million three or a million four? A. Thereabouts.

Q. Yes. And the members of your family got approximately another million, did they not? A. Yes.

Q. Now, was that before or after taxes? A. I don't remember. I think it was before taxes.

Q. Well, now, was there anything done about paying the capital gains tax on the stock which you owned? A. It was paid.

Q. By you? A. Yes.

Q. In the year 1940? A. Yes.

Q. And '41? A. Yes; whenever it was.

Q. I mean so that we get that clearly before the Jury, as I understand it, in 1940 there was $6,600,000 distributed to your stockholders, is that right? (185) A. Yes, that's right.

Q. And apportionately? A. Yes.

Q. Based on the number of shares that they had; and then there was some money held back for contingency purposes, in case there were claims against the company and taxes and all that sort of stuff? A. There was.

Q. I don't mean income taxes but general taxes; right? A. It was held, yes.

Q. It was held. A. In the bank.

Q. And that was distributed in 1941, is that right? A. It was held for a year. I think it was distributed in '32—'42; I think it was early '42.

Q. I beg your pardon? A. I think it was early '42.

Q. And that distribution amounted to only $217,000, did it not? A. Well, I don't remember exactly. I think we had a half million dollars up in the bank.

Q. Well, didn't you hold $900,000 in reserve? A. (No answer.)

Q. I mean the company, somebody held $900,000 up in this contingency fund? (186) A. I don't remember exactly, but it must be right.

Q. Yes. A. You have the figures there.

Q. As a matter of fact, perhaps I can refresh your memory a little bit.

Mr. Van Riper: May I have this marked for identification, please?

The Clerk: It is marked Defendant's Exhibit 2 for Identification.

(Marked Exhibit D-2 for Identification.)

Mr. Van Riper: I don't know what to call this, Mr. Tyne, beyond a sheet.

Mr. Tyne: Just call it a sheet.

Q. I offer you this sheet, marked Exhibit D-2 for identification, and ask you if that refreshes your memory as to the situation with reference to closing? A. Well, it is Browne Vintners; it must be right.

Q. Well, it doesn't necessarily mean it must be right because I handed it to you. I want you to make sure that it is right. A. (No answer.)

Q. Well, does it sound generally right to you? Put it that way. I am not trying to trap you on any matter of a few dollars or anything like that. We aren't dealing with a few dollars in this case. A. No, you see I am a bit confused. When we sold out, the (187) Seagrams Distillers insisted that a half million dollars should remain in the bank for a year.

Q. Yes. A. In case any—in case we have any debt or anything else that would be paid out of it, but there was none and they released the money.

Q. And you held up, did you not, more than that half million? You had to have a half million held up for one purpose? A. That's right.

Q. Then you held up about four hundred thousand more for general purposes that might occur, contingencies? A. Yes.

Q. Right? A. Yes.

Q. So that all together you held out about $9,000—

The Court: $900,000.

A. $900,000.

Q. $900,000; is that right? A. Yes.

Q. Then, after all these claims were cleared up, if there were any—anyhow, everything was disposed of—there was ready for distribution, was there not, $217,000, in round figures? A. I believe that's what it was.

(188) Q. Which was distributed the following year? A. Yes.

Q. Either '41 or '42; right? A. (No answer.)

Q. And that went to all the stockholders of record, proportionately to the number of shares of stock they had, is that right A. Yes.

Q. Now, was a tax paid on that?

Mr. Tyne: I object, if the Court please. I don't know why we should go into the payment of tax, capital gains, or anything like that. I think we are going too far afield now.

The Court: It may have something to do with this business of handing back the tax money to Zwillman. I don't know. Is that what it is?

Mr. Van Riper: Why, it goes right to the very heart of the thing, if your Honor please. That's our contention, that the tax was paid on our stock.

The Court: All right.

Mr. Tyne: There has been no evidence that they own any stock, that the defendant owns any stock.

The Court: All right, but he contends that he did own it and that therefore he wants to find out

whether the tax was paid on all these various sums. I will allow it.

(189) Q. Mr. Reinfeld, my question was, in 1941, when the final distribution was made of $217,000 to all of the stockholders, was the tax paid on that, the capital gains tax? A. Yes, all the taxes were paid, whatever the amount was that we got from Browne Vintners.

Q. In other words, the capital gain tax was paid on all of the stock of record of Browne Vintners, either in '40 or '41, is that right? A. Yes.

Q. That's correct? A. That's right.

Q. Now, when was it decided to sell Browne Vintners? A. Well—

Mr. Tyne: If the Court please, may I interject a moment? May I reserve my right to strike all of this testimony in the event it isn't tied up or doesn't become material or relevant, on the question of ownership?

The Court: You can make the motion whether you reserve it or not.

Mr. Tyne: All right.

Q. Mr. Reinfeld, the question is, when was it decided to sell Browne Vintners? A. The company was always for sale.

The Court: Well, when did you finally decide to sell it to the people that bought it? When they offered you (190) enough money?

The Witness: When I couldn't—I dealt with other people.

The Court: Well, you didn't sell it to other people, you sold it to one person.

The Witness: Right.

Q. And when did you decide to sell it to them?

The Witness: Well, it was late in December.
The Court: All right.
The Witness: Of 1940.

Q. Late in December of 1940. Well, that's when the sale actually was closed, wasn't it, the papers were signed? A. Well, within thirty days after; after we made the sale, thirty days after, they closed the deal.

Q. Now you say the company was always for sale? A. Yes, sir.

Q. Had you told people it was for sale? A. Yes, I told some people, because the company was in a financial bad condition.

Q. And it always was in bad condition financially? A. All the way to '38.

Q. Now, did you discuss with the partners in the company, your fellow stockholders, the sale of the company? A. Yes, yes.

Q. And with whom did you discuss it? (191) A. Mainly with Mr. Lentz and with Mr. Davis, because they represented these two groups; also my accountants.

Q. Before you sold it to Seagram, you had been negotiating with other people, had you not? A. I did.

Q. For the sale of it? A. Yes.

Q. And you were talking with Mr. Porter? A. I did.

Q. Mr. Porter represented whom? A. National Distillers.

Q. And you talked with Mr. Porter of the National Distillers? A. I did.

Q. And you talked with Mr. Rosenstiel of Schenley's? A. I did.

Q. Now, you had a proposition from Mr. Rosenstiel of Schenley's, did you not? A. I did.

Q. Which involved the taking by your people of stock of Schenley's? A. I did.

Q. And did you discuss that with your partners? A. Yes, sir.

Q. With whom did you discuss it A. Well, it was discussed with Mr. Davis, Mr. Newman, Mr. (192) White, Mr. Cohen—all the directors, I think; there was seven or something.

Q. Did you discuss it with Zwillman and Stacher? A. That was up to Mr. Davis.

Q Did you discuss it with Zwillman and Stacher? A. I think I did. He—

Q. Did you finish your answer? A. I wanted to say that Mr. Davis told them about it and they wanted to see me and I spoke to them.

Q. You did speak to them about it? A. Yes.

Q. Now, Mr. Rosenstiel proposition was turned down wasn't it? A. Yes. I recommended it, but they turned it down.

Q. Now, then, when it came time—when you finally had an offer from Seagram of seven and a half million, did you discuss that with your partners? A. I did.

Q. And with whom did you discuss that? A. With all of the directors and—with the same directors, Mr. White, and Mr. Lentz.

Q. Newman? A. Newman, Mr. Davis, both Davises.

Q. Did you discuss it with Zwillman and Stacher? A. Whoever the stockholders were.

(193) Q. Did you discuss it with Zwillman and Stacher? A. I did, yes.

Q. Did you discuss it with Rutkin? A. No, sir.

Q. You didn't; where did you discuss with Zwillman and Stacher and the Davises and the other stockholders the question of a sale to Seagrams for seven and a half million? A. At Browne Vintners' office.

Q. Did you ever discuss it with them at any other place? A. No, sir.

Joseph H. Reinfeld—for Government—Cross

Q. Was Zwillman and Stacher at Browne Vintners' offices? A. No, sir.

Q. Well, where did you discuss it with them? A. I came to Newark.

Q. You came to Newark? A. Yes.

Q. And when you came to Newark to see Zwillman and Stacher about this sale to Seagram for seven and a half million, who else was present? A. Mr. Davis.

Q. Joe Davis? A. Yes.

Q. Anyone else? A. No.

Q. Whereabouts in Newark did you see Zwillman and Stacher? (194) A. I don't really remember the place, but it might have been somewheres in my real estate office or maybe in Mr. Newman's office, or Zwillman's office. I don't remember.

Q. Well, are you sure that you discussed it with them? A. Yes.

Q. Sure you discussed it with them? A. Positive.

Q. Now, did you discuss it with Harry Davis? A. Yes, he was in the meeting.

Q. Which meeting? A. In Browne Vintners' meeting.

Q. Did you discuss it with Mr. Pokris? A. Yes.

Q. Whereabouts was Pokris? A. Well, he wasn't a director but he used to be one of our jobbers. He used to come up to the office quite often. I spoke to him in general that we have this offer.

Q. Yes. But you talked to him about it in that sense, but the stockholders and the directors you talked with for the purpose of getting their approval, didn't you? A. Well, when it was really a sale; when the sale—

Q. Yes. A. When I was sure that the amount will be accepted by Seagrams, we held a meeting and I told the members all about it, the directors all about it, and I said, "Gentlemen, it (195) is immaterial to me whether you sell the company or not. I want to go out", and I walked

out of the office. I said, "You gentlemen decide among yourselves. I don't want to suggest one way or another". I was out for about a half hour or so. I don't remember exactly whether it was Mr. Lentz or Mr. Davis called me in and said, "We have decided to sell the company".

Q. And you said to them, did you not, that "I won't sell unless you fellows want to do it, or unless you are willing", something to that effect? A. Yes, yes.

Q. Now, Mr. Reinfeld, isn't it a fact that you attended a meeting in the apartment of Harry Davis in the Park Central Hotel in New York and that there was present Harry Davis and Joe Davis and Zwillman and Stacher and Rutkin? A. No—

Q. Wait a minute, now. A. I am sorry.

Q. Isn't it a fact that you said at that meeting, "We had an offer to sell Seagrams for seven and a half million and I think we ought to do it, because we are short of capital. We need more money and Dewey is putting the heat on us all the time and he has our books up there all the time, and I think we ought to get out"? A. At that time we—

(196) The Court: No, no. Did you have the meeting at this Park Central Hotel and did you say that? Yes or no.

The Witness: Mr. Rutkin wasn't there.

Q. Did you have the meeting? A. I did.

Q. You did. Was Zwillman there? A. He was.

Q. Was Stacher there? A. Yes.

Q. Joe Davis there A. Yes.

Q. Harry Davis there? A. Yes.

Q. Who else? A. I don't think Stacher was there. I think it was Zwillman, Harry Davis, Joe Davis—I don't know; I think that's about all there was.

Q. Did you say at that time, "I had an offer from Seagrams for seven and a half million and I think we ought

to take it because we need more capital and Dewey is putting the heat on us"? A. I didn't say that.

Q. Well, what did you say? A. I said, "I have an offer. This is the best offer, after shopping for months", because the company was sold for, (197) six and a half million dollars a month before that to National Distillers. They turned it down. I explained it to them. "Now, I have an offer of seven and a half million dollars", but I didn't say we were short in capital because we weren't, at that time, and Dewey wasn't after us at that time.

Q. Well, now, let's see. Didn't you, first of all, didn't you tell us a few minutes ago that you had this meeting with your directors, including the two Davises, in the Browne Vintners' office? A. Yes, all the directors.

Q. Yes. Did you have in mind that time that you had a further meeting with the Davises and Zwillman and Stacher in the Park Central Hotel? A. I didn't have it in mind, no.

Q. You didn't have it in mind. Do you now say that you saw Zwillman in Newark about the sale to Seagrams?

Mr. Tyne: Well, I object to that. I think the time ought to be fixed, as to in just what order the meetings took place.

The Court: Well, any time, at any time.

A. I believe I had a meeting in Newark and I had a meeting at the Park Central, now that you refresh my memory.

Q. Now, then, you say that you were not in any financial difficulties at that time? (198) A. Not at that time.

Q. That you didn't need capital? A. Because we got a five-year loan from the bank for five million dollars just about six months before that which put us in very good condition.

Q. Excuse me. Go ahead. A. Which put us in very good condition.

Joseph H. Reinfeld—for Government—Cross

Q. Didn't you say to us just a few minutes ago here, Mr. Reinfeld, that you were always in financial trouble, the company?

Mr. Tyne: Up until 1938.

A. Up until, including—we were in very bad financial condition up until then.

Q. Until when? A. Until we got that five million dollar loan.

Q. Well, didn't you tell the people at the Park Central meeting that you were having some bank trouble? A. I didn't have any bank trouble.

Q. Didn't you tell them that you were having some bank trouble? A. I couldn't tell them if I didn't have any.

The Court: No, did you tell them?

The Witness: I didn't.

Q. You didn't tell them?

The Court: All right. We will recess now until 2 o'clock. The jury will be excused first.

(Noon recess.)

(199) AFTERNOON SESSION

Mr. Van Riper: May I proceed, sir?

The Court: Yes.

Mr. Van Riper: Thank you.

JOSEPH H. REINFELD, resumed the stand.

Cross examination (continued) by Mr. Van Riper:

Q. Mr. Reinfeld, so that we both understand each other, my recollection is that when we adjourned for the noon recess we were talking about the meeting in the Park Central Hotel. A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And I think you told us that you did not tell your partners who were there that one of the reasons why you should sell was because of financial troubles, because you were not in need of more money at that time. A. Yes.

Q. You did say that? A. I think so, yes.

Q. I just want to have a continuity of our conversation. A. Yes.

Q. Now, then, I think you also said, just as we recessed, that you did not tell that, that another reason why you should sell was because District Attorney Dewey was putting the heat on you, (200) because he was not putting it on at that time. A. I don't think so, no.

Q. You don't think so. Do you mean by that you don't think you told them that, or don't think that Dewey was putting the heat on? A. I don't think there was any heat by Dewey.

Q. Well, now, maybe you wouldn't call it heat, but the District Attorney at that time was investigating your company, was he not?

Mr. Tyne: I fail to see the relevancy of this, your Honor, and I object to this line of testimony.

The Court: Well, no, he has said that he did not discuss that with his fellows and that at that time there was no heat being put on by Dewey. I will allow it.

(201) Q. Mr. Reinfeld, isn't it so that at that time, the time you had the meeting in the Park Central which was December, 1940, or thereabouts, that District Attorney Dewey was investigating your company in New York? A. I don't think it was.

Q. Had he been investigating it prior to that? A. He was.

Q. And when did he stop, do you know? A. Well, I don't remember.

Q. One of the things he wanted to know was who were the real stockholders; isn't that so? A. I don't remember.

Q. You don't remember that that was one of the things that Dewey wanted to know? A. I don't remember, no.

Q. What did District Attorney Dewey want to know about your company? A. Well, they asked me about the stockholders, but I don't remember what stockholders he asked about.

Q. Well, what did he want to know about stockholders? A. Who were the officers and so on and so forth.

Q. And who were the real stockholders, didn't he? A. No, I don't think he put it that way.

The Court: Well, he wanted to know who the stockholders in the company were.

(202) The Witness: Who was the officers and the stockholders, yes.

Q. And didn't you say at this meeting in the Park Central that you didn't know how long you would be able to keep from District Attorney Dewey information as to the real ownership of the stock? A. I didn't.

Q. You didn't say that? A. No.

Q. Now, do you remember going with Rutkin on several occasions from your office to the building in which Dewey's office was located in New York? A. I never went with Rutkin.

Q. And do you remember saying to Rutkin on several occasions, "Don't you come into the District Attorney's office or building with me because I don't want him to know that you own stock in the company?" A. No.

Q. You never said that? A. No.

Q. Now, before you sold the company in 1940, did you discuss it with Mr. Kopstein? A. Yes.

Joseph H. Reinfeld—for Government—Cross

Q. Mr. Kopstein's name is Jacob Kopstein? A. Yes.

(203) Q. And he was a stockholder in the company? A. Yes.

Q. And do you know how many shares of stock he owns? A. I don't.

Q. Do you know how much of his stock, if any, was fronted stock? A. I don't.

Q. And don't know whether any of it was fronted? A. No, probably there was some but I don't remember just how much—I don't know how much was owned or how much was fronted.

Q. Well, would 176 shares seem something like the amount that he might own? A. I couldn't say.

Q. And if he did own 176, would you know how much of it was fronted? A. No.

Q. Did you arrange for Kopstein to front stock? A. I didn't.

Q. Did you talk with him about it? A. I did.

Q. Before he became a front? A. Well, I believe it was before.

Q. And what relationship had you had with Kopstein up until that time? (204) A. Nothing. I knew him.

Q. You knew him? A. Yes.

Q. Now, did you know for whom Kopstein was fronting stock? A. No.

Q. Did you know all together how many shares of stock were fronted in the company? A. Yes.

Q. How many? A. About $700,000.

Q. That is $700,000 in the initial investment? A. No, all through the time.

Q. Now, you don't—

The Court: The initial investment was only $250,000.

Q. You say seven hundred thousand. By that do you mean 700 shares at a thousand dollars apiece? A. Yes, or a little over.

Q. And the sales price was about three times that much? A. That's right.

Q. So that the sale price would have been about $2,000,000, over $2,000,000? A. Yes.

Q. So $2,000,000 of it was fronted stock? A. No, seven hundred thousand.

(205) Q. Mr. Reinfeld, just to get the record straight, I remind you that you told us this morning that you were fronting seventeen shares? A. Yes.

Q. I call your attention to your testimony in New York—

Mr. Van Riper: At page 268, Mr. Tyne.

Q. (Continuing)—testimony given in New York in the same proceeding that we talked about this morning, given there under date of December 20, 1948—down at the bottom—this question: "Did you have stock in your name which others were the owners of the stock?" And you answered "No, sir."

"Question: When I say owners I mean that they were the actual owners and you were the record owner. You understood my question. Answer: The stock I owned was my own.

Question: Did you have any stock of record in your name which belonged to anyone else? Answer: No, sir.

Question: Did your have any stock of record in your name which belonged to your former partners, any of them? Answer: No, sir."

Did you testify that way in New York? A. I did. I didn't remember.

Q. Under oath? (206) A. I did.

Q. Yes. And that was not true, was it? A. I didn't remember, so that's all I can say.

Q. I say it was not true. A. No.

Q. Now, then, Mr. Reinfeld, at the time the company was sold and dissolved, were some letters sent out to the stockholders, do you recall? A. There was, yes.

Mr. Van Riper: Will you mark this for identification, please?

The Clerk: That exhibit is marked D-3 for identification.

(Marked Exhibit D-3 for identification.)

Q. I show you a letter or a copy of a letter on the letterhead of Samuel R. Cohen and Company, Accountants, dated March 3, 1941, marked here D-3 for identification, and ask you if that is a copy of a letter that was sent out to stockholders? A. I really—probably it was but I don't remember. I didn't take care of any of that part of the office. That was up to the accountants.

Q. Up to Mr. Cohen? A. Mr. Cohen and his assistants, or whatever it was.

Q. But you saw this letter, did you not, or a copy of it? (207). A. I must have got one.

Q. I beg your pardon? A. If that was sent out to all these stockholders I must have got one.

Q. All right.

Mr. Van Riper: Will you mark this, please?

The Clerk: This exhibit is marked D-4 for identification.

(Marked Exhibit D-4 for identification.)

Q. I show you another letter on the letterhead—what purports to be the letterhead, of Browne Vintners Com-

pany, 30 Rockefeller Plaza, New York City, dated April 8, 1941. This purports to be a carbon copy, apparently, and it is marked here D-4 for identification, and ask you if you signed that letter—or saw that letter—or a copy of it? A. I don't remember, but if that's what was sent to all stockholders I must have got one.

Q. And you think it probably was sent out? A. Probably it was sent out but I don't know whether that's the one I received.

Q. Now, isn't it a fact that while you were in business in Browne Vintners and while you were giving your time to it and running it, that Rutkin was more or less of a trouble shooter for you, going to different cities, different places, seeing different people about different (208) things, straightening out situations? A. No, sir.

Q. Isn't it a fact that in 1937 or 8, something about that time, you sent Rutkin to Boston to see if he could help a man by the name of Zuckerman who was in trouble up there over some prohibition violation that had occurred during prohibition? A. I did not.

Q. And isn't it a fact that Rutkin was indicted in Boston? A. It is only—I heard about it when he called me up to lend him the money and he told me he was in trouble.

Q. He was in trouble in Boston, wasn't he? A. That's what he told me.

Q. And you paid his lawyer, did you not? A. I didn't pay his lawyer. I loaned him the money.

Q. And how did you loan it to him? A. I don't remember.

Q. Well, didn't you pay his lawyer direct? A. I don't remember. I don't remember how it was done.

Q. But the money came from you, at any rate, did it not? A. Yes.

Q. And was that money from you personally or was it from the Browne Vintners Company? A. From me personally.

Q. From you personally. Now, isn't it a fact that you had (209) a standing order with your employees at the Browne Vintners Company office that whenever Mr. Rutkin came in he was to have access to you immediately? A. I never did.

Q. And isn't it a fact that when Mr. Rutkin came into the Browne Vintners' office he walked right into your office without being announced? A. No, sir.

(210) Q. You had a system there, did you not, in the Browne Vintners' office whereby callers had to be announced by the receptionist? A. Yes, sir.

Q. And you had a receptionist in an outside room, the room that the customer came in, or the caller came in, he would just see a young lady there, a receptionist, is that right? A. Yes.

Q. And if he wanted to see Mr. Reinfeld, he had to be announced and told to go in, is that correct? A. Yes, sir.

Q. Now, isn't it a fact that Rutkin never had to do that? A. I believe he did, either he called up before he came and then he was announced, and if I was free at the moment, he came in; if I was busy, I told him to wait.

Q. Now, isn't it a fact that Rutkin used offices in the Browne Vintner suite whenever he came there and wanted to use one? A. No, sir.

Q. The office of Mr. Lentz or Mr. Davis or your office, if he didn't happen to be there? A. No, sir.

Q. And isn't it a fact that Mr. Rutkin received callers at the Browne Vintners' offices, talking with them in one of the inside private rooms? (211) A. No, sir.

Q. And isn't it a fact that Rutkin transacted business at the Browne Vintners' office for the Browne Vintners company? A. No, sir.

Q. Now, in addition to other things, you had a bar set up in the Browne Vintners' office suite, did you not? A. Yes, sir.

Q. And you had your brands of liquor displayed there? A. Yes.

Q. And you would entertain your customers there, did you not? A. Yes, sir.

Q. And isn't it a fact that Rutkin on many occasions entertained customers in the bar? A. Well, I assume if he brought anybody up, they had a drink; many others came up.

Q. And that happened during what years? A. Well, I think—I don't recollect what years, I would say it was somewheres around—because we moved three times. I really don't remember the year.

Q. You always had the bar, did you not? A. No, not until we moved to the last building.

Q. And when did you move in the last building? A. I don't remember.

Q. Well, can you give us an idea, Mr. Reinfeld? (212) A. I don't remember.

Q. Well, can you give us an idea, Mr. Reinfeld? A. Well, probably in '38, or something like that, or '37.

Q. And Rutkin had the right to bring customers in there and entertain them at the bar, did he not? A. All people, friends to the company came in now and then and had a drink, or brought a friend along.

Q. Well, all friends of the company did not bring customers of the company in there, did they? A. He didn't bring any customers.

Q. Beg pardon? A. He didn't bring any customers.

Q. Is that what you want to say, that Rutkin never brought— A. Brought some friends now and then, friends, I would say one or two, and they had a drink at the bar, and there was many. During the day probably a hundred came up to have a drink, maybe fifty. We had a bartender there and he served certain people that he knew.

Q. But did or did not Rutkin bring customers of the Browne Vintners to the office and entertain them at the bar? A. No.

Q. Are you sure about that? A. I am sure. If he did, I don't remember.

Q. All right. Now, then, did you ever go any place with Rutkin selling products of the Browne Vintners company (213) in which you both joined in an effort to promote your product? A. No, sir.

Q. You didn't? A. No, sir.

Q. Did you ever go to Boston with Rutkin concerning the sale of Browne Vintners' products? A. I didn't.

Q. Now, what were some of the whiskeys that Browne Vintners were selling? A. They were selling White Horse Scotch Whiskey.

Q. And was there a time—pardon me, did you finish? A. Yes.

Q. Was there a time when you were more or less putting on a drive to push White Horse? A. We put on many drives.

Q. Yes. Now, do you remember on one occasion being in Boston with Rutkin and going to a place called the Mayflower Hotel or the Mayflower Lounge and meeting a man by the name of Ben Gaines? A. I know who you are talking about, but I don't remember being there with Mr. Rutkin; I remember being there with a gentleman by the name of—I can't just think of his name, one of our jobbers.

Q. You know Ben Gaines? (214) A. I do.

Q. He ran a place in Boston, did he not? A. He did.

Q. And you knew the place that he ran? A. Yes; it was a cabaret.

Q. Now, isn't it a fact that you went to Ben Gaines' place in Boston with Rutkin in 1936 or 1937, and that Rutkin introduced you to Ben Gaines in this manner: "Ben, I want you to meet my partner, Joe Reinfeld. This is the guy I told you so much about"? A. No.

Joseph H. Reinfeld—for Government—Cross

Q. And isn't it a fact that at that same time you said to Gaines, "Jim has told me what you are doing with White Horse, and I hope you keep on pushing it"? A. No, sir.

Q. You say that that conversation never took place? A. No sir. But I was in his place two or three times probably.

Q. Beg pardon? A. I was in his place more than once.

Q. In Gaines' place? A. Yes.

Q. In Boston? A. Yes.

Q. But never with Rutkin? (215) A. No, sir.

Q. No. And did you talk with Gaines when you were in his place? A. I did. I didn't know him very well but I do remember I was introduced through the jobber to him. I will think of the jobber, I just can't think of it at this moment.

Q. Did you talk to Gaines about White Horse? A. Probably did, I was out selling, I must have talked to him about our products.

Q. Now, then, when was the first time that you started to give Rutkin money after Browne Vintners were organized, after the legitimate business came in? A. I can't remember dates or times, but many times I gave him money, probably 200 to 500 dollars, many a time.

Q. Well, now, do you remember you told us yesterday about the California trip? A. Yes.

Q. As I understand it, you were in California on your own and you had a phone call from Rutkin, who else told you he was in California? A. Yes, sir.

Q. Right? Whereabouts were you, in San Francisco? A. Los Angeles.

Q. Los Angeles. And then two or three days later Rutkin communicated with you again in Los Angeles, did he not? (216) A. Yes.

Q. And said, in effect, "I called up to say good-by, I am going home tomorrow." Right? A. Yes.

Q. And then you said to him, "I am going home Sunday," or some other day, "by train, and if you wait I would like to have you ride home with me." A. Yes.

Q. Now, do you know what year this was? A. To the best that I could remember, it was in '39.

Q. This was in '39? A. Yes.

Q. Was this after Rutkin had been in trouble in Boston, or before? A. Before.

Q. Before he got in trouble. And then he did wait, didn't he? A. Yes.

Q. Canceled a plane reservation? A. Yes.

Q. And came back on the train with you? A. He did.

Q. And that is when you talked to him about going to work for the company in Chicago? A. Yes.

(217) Q. Now, didn't you tell Rutkin at that time, coming back on the train, that the Chicago office was not doing what you wanted it to do and you wanted someone in there who could push your products? A. Well, I don't know whether I told him that way.

Q. Well, in substance? A. I told him that—I told him that he should stop doing what he was doing and get down to work.

Q. And he didn't— A. (Continuing) And that I would give him a job to start him off and learn the liquor business.

Q. Didn't you say to him, "There is plenty of opportunity for you in the company to do some work and make money besides being a stockholder"? A. No, sir.

Q. And when you got to Chicago you took him to meet—who was it you said? A. Lasky, who was our middle west manager.

Q. Lasky. And he was manager of the Chicago office? A. Yes, sir.

Q. And didn't you tell Lasky that Jim was coming in to Chicago to take over and that whatever arrangements Jim made with buyers was all right? A. No, sir.

Q. You didn't. What did you tell Lasky? (218) A. I told him to give him a job and watch him and he—and try to sell, what we call a missionary man, liquor to the hotels and restaurants and cabarets, bars and package stores and so on.

Q. Excuse me. A. (Continuing) Wherever he wants, to put him in a place where he thinks it would do him some good.

Q. You had already given Rutkin the job on the train, hadn't you? A. I did not.

Q. You did not? A. I told him I am going to speak to Lasky and put him on to work in Chicago.

Q. Now, you said yesterday, as I recall your testimony, you said something to him about going to Chicago to learn the liquor business. A. After a long talk with him, I told him that I wanted to put him in Chicago and I am going to talk with Lasky about him and I would like him to take a job there.

Q. And didn't— A. (Continuing) To start in the liquor business.

Q. And didn't you say yesterday "to learn the liquor business"? A. To learn it, yes.

Q. And to learn the liquor business, you were willing to (219) pay him $15,000 a year, is that right? A. Well, that wasn't decided by me.

Q. Well, who was it decided by? A. By Mr. Lentz.

Q. By Mr. Lentz. Well, when was that decided by Mr. Lentz? A. He was the General Sales Manager, the National Sales Manager, so it was up to him to make the salary.

Q. Well, who was the boss of the company? A. Well, we generally don't interfere with the Sales Department.

Q. Well, you interfered with the sales department on the train home from California when you talked with Rutkin,

didn't you? A. That's right. But I still have to report it to the general sales manager.

Q. And then you took Rutkin to Lasky? A. Right.

Q. And told him to put him to work? A. That's right.

Q. And then you got back to New York and you told Lentz what you had done, did you not? A. Yes, sir.

Q. And what you had done was to put Rutkin to work in Chicago at $15,000 a year to learn the liquor business? A. No, Mr. Lentz called Lasky after and told him to put him (220) on at $15,000.

Q. Now, isn't it a fact that on the train from California to Chicago, or in a hotel in Chicago, or some place in Chicago, while you were still with Rutkin, that you said to Rutkin, "Jim, you can do a great job here, there is a great opportunity in Chicago and you can name your own figure" and that he said to you, "I am satisfied to make my money out of my stock interests and all I want is a decent income while I am here, plus an unlimited expense account."

The Court: Just a minute, please.

(221) A. I did not.

Q. Didn't he say that, what I attributed to him in that question? A. I didn't say it and he didn't say it.

Q. He did have an unlimited expense account, didn't he? A. I don't think he did.

Q. The kind of job he was going on requires an awful lot of expense money, does it not? A. Yes.

Q. It is really a spending job, isn't it? A. Yes, sir.

Q. How much was Lasky getting as manager of the Chicago office? A. I don't remember. I could probably look it up for you.

Q. Will you look it up? A. I will do it if we have the record there I will look it up.

Q. Where would you look it up in what record? A. I don't know. There is records left at the Knickerbocker Warehouse.

Q. Of Browne Vintners Company? A. Yes, sir.

Q. Is that where they are now? A. They always were there.

(222) Q. Was any inquiry made of you in New York some time ago about the records? A. There was.

Q. Who made the inquiry? A. The Government made the inquiry.

Q. Did you— A. Mr. Freel.

Mr. Tyne: I object to this line of testimony.

The Court: What is the basis of your objection?

Mr. Tyne: It is irrelevant, very remote and a collateral issue.

The Court: I don't think that is material.

A. I told—

The Court: Never mind.

Q. Isn't it a fact Mr. Lasky was getting $100 a week as manager of the Chicago office? A. I couldn't tell you.

Q. You are not prepared to say that is wrong? A. Yes, I think it is wrong.

Q. You think it is wrong by how much per week? A. I really don't—I couldn't say because that wasn't my job.

Q. And isn't it a fact that Rutkin gave up the Chicago activity because of the trouble that he got in in Boston? A. Well, to be honest with you I think Lasky got fired on (223) account of him.

Q. But now answer my question will you, please? Isn't it a fact that Rutkin gave up his Chicago activity because of the trouble which he got in in Boston? A. Yes.

Q. And isn't it a further fact that when the trouble was over in Boston and he was through having completed his sentence in Boston he came back to you and you said

"Jim, I am sorry that I ever sent you up there in the first place and got you in this trouble"? A. No, sir. There is no truth to that.

Q. That is not true? A. No, sir.

Q. All right. Now then, when was the first time after Browne Vintners was formed outside of the Chicago employment, that you gave Rutkin money? A. When he came out of jail I gave him money.

Q. And what year was that? A. I think it was in 1940.

Q. And how much did you give him then? A. Two or three thousand dollars.

Q. And where did you give it to him? A. Why, I don't remember.

Q. Now, do you remember giving Rutkin some money for the purpose of him buying a place in Florida? (224) A. I do.

Q. When was that? A. In '36.

Q. 1936? A. Yes, sir.

Q. And how much money did you give him then? A. $60,000.

Q. And what place did that have to do with? A. Pardon?

Q. What place was he going to buy with that money? A. The Dempsey Vanderbilt, the hotel they rented.

Q. In Miami? A. Yes.

Q. You know that he did go down and either buy that hotel or buy an interest in it, don't you? A. What I understood, him and Dempsey went down and bought it.

Q. And you loaned him the money? A. Well, he asked me for the money. He claimed—I was disputing it for awhile and arguing for about two months over it—he claimed that he had stock in the company, so I sort of recognized it and gave him the money and got an assignment from him so I got rid of him.

Q. You let him have $60,000? A. Yes.

(225) Q. Now, then, you went to Florida yourself after that and went to the Dempsey Vanderbilt Hotel, did you not? A. I did.

Q. At the time when Rutkin was either the owner or a part owner of it? A. Yes, sir.

Q. Right? And did you go there in February or March 1937? A. Well, it must have been somewheres about that. I don't remember exactly the time.

Q. And did you stay at the Dempsey Vanderbilt Hotel? A. I did.

Q. And did you take advantage of the fact that Jim was a part owner of it, by staying there complimentary without paying for your accommodations? A. I did not.

Q. You did not. And did you say to someone at that time down there that you were a part owner of that hotel? A. I did not.

Q. Now were you in the bar at the Dempsey Vanderbilt while you were down there? A. Yes, sir.

Q. Do you know who the chief bartender was at that time? A. No, sir.

Q. Did you go into the bar at the Dempsey Vanderbolt Hotel or at some other place in the hotel, talk to the chief (226) bartender or head bartender, whatever he might be called, and give him a hundred dollar tip and say that "I am a part owner here," and "Push White Rock, or White Horse"? A. I don't remember doing anything of that kind.

Q. Would you say that you didn't do it?

The Court: He says he doesn't remember.

A. I don't remember of doing it.

Q. All right. Now, did you have a conversation with Rutkin about your visit to the Dempsey Vanderbilt Hotel and did you tell him how well you thought of it? A. I

didn't think well of it. Dempsey complained to me that the money that comes in during the night he takes out in the morning and pays to the bookies.

Q. Who did? Dempsey or Rutkin? A. Dempsey.

The Court: Who took it out?

The Witness: Mr. Rutkin.

Q. Dempsey complained to you about that, right? A. Yes, and I spoke to Mr. Rutkin about it.

Q. And he told you that wasn't so, did he? A. He didn't argue about it.

Q. Now, do you know who else was his partner in the Dempsey Vanderbilt Hotel? A. No, I couldn't say.

Q. Wasn't Ben Gaines interested in the Dempsey Vanderbilt (227) Hotel? A. No, no, not at that time.

Q. Was he later on? A. Yes, he took it over later on, from what I remember.

Q. Now, do you remember Ben Gaines coming up to the Browne Vintners' offices and discussing with you and Rutkin the taking over by him, Gaines, of the Dempsey Vanderbilt Hotel? A. No, sir.

Q. Do you remember, or isn't it a fact, that at some time in '37 or '38 you had a conference in the Browne Vintners offices with Rutkin and Ben Gaines at which time Rutkin said to you, "Joe, Ben Gaines wants to take over my interest in the Dempsey Vanderbilt Hotel, and if he does, I'll have enough money to pay you back what I borrowed from you, and I don't know whether I ought to do that or whether I ought to keep my interest"? A. No, sir.

Q. That's not a fact? A. No, sir.

Q. Did you have a conversation with Rutkin and Gaines in which anything of that nature was talked about? A. I don't think I ever had any conversation in Browne Vintners' office with the two of them.

Q. Did you ever have any conversation in any other place outside of the Browne Vintners' office with the two of them? (228) A. No, sir.

Q. Meaning Gaines and Rutkin? A. No, sir.

Q. Concerning the Dempsey Vanderbilt Hotel? A. No.

Q. And Rutkin's interest therein? A. No, sir.

Q. You are sure about that? A. Positive.

Q. And you are sure that you didn't see Gaines at the Browne Vintners office? A. He might have come along later on; I don't know. I don't remember speaking to the two of them anything about Dempsey Vanderbilt affairs.

Q. All right. Now then, you gave him the $60,000 in 1936? A. I did.

Q. And you said yesterday, I think, that that was in cash? A. I did. It was part check. I think it was fifteen or twenty thousand in check and the balance was cash.

Q. Yesterday you said cash, did you not? A. If I did I am sorry. I am not positive. It was $60,000 and I believe there was a check in it but the amount of it I don't remember.

Q. A company check or your own? A. My own check.

(229) Q. This was all your own personal money? A. All my own personal money.

Q. None of it came out of the company? A. No, none of it.

Q. Now, then, when was the next time you gave him some money? A. Well, then, I didn't see him much for a couple of years, while he was down there in Florida.

Q. Isn't it a fact that he was never in Florida over a month at a time and that he always came back at intervals? A. Well, I don't remember whether it was a month or two.

Q. Whether a month or two? A. I don't remember whether he came back in a month or two. I didn't see him for a long time.

Q. And isn't it a fact that he often telephoned you from Florida? A. I don't remember of his telephoning me.

Q. Well, did you telephone him when he was in Florida? A. No, sir.

Q. Isn't it a fact that you had telephonic communication with one another while he was in Florida and that that telephonic communication had to do with the selling of the Browne Vintner's product? A. No, sir.

Q. You are sure about that? (230) A. Yes.

Q. All right. A. Yes.

Q. When was the next time that you gave him money? A. Well, I don't remember just when it was but, as I said before, I didn't see him for quite some time.

Q. Yes. A. After '36 when I gave him money again.

Q. Yes. A. I think it was in '41.

Q. That was right after the company had been sold, was it not? A. No, I gave him money in 1940, in early 1940, as I said before, when he came back.

Q. Yes. How much did you give him then? A. Two or three thousand dollars; I think it was three thousand dollars.

Q. Was that in cash? A. Yes, sir.

Q. Now, in 1941, you say, when you gave him money, that was after the company was sold, was it not? A. Yes, sir.

Q. Did you know how long the Dempsey Vanderbilt Hotel stayed open? It wasn't open all year around, was it? A. I don't know. I don't think it was open all year round (231) but I don't know when it was open or closed.

Q. Well, didn't—

The Court: Wait a minute. If there is any more disturbance back there, clear that whole corridor.

I am sorry, Mr. Van Riper.

Mr. Van Riper: I am sorry. I beg your pardon.

Q. Don't you remember Rutkin coming in to you one day in the month of April or May, in the spring, and saying to you "I'm through for the season down there now"? A. No.

Q. "What's to be done here?" A. No, sir.

Q. You don't recall that. Now you know a man by the name of George Wood? A. George Wood?

Q. Yes. A. You mean the attorney?

Q. I don't know. Do you know a man by the name of George Wood? A. Do I know a man by the name of George Wood?

Q. That had a connection with your business? A. A connection with my business? A. No, sir.

Q. Who is in the theatrical agency business? A. I know George Wood in the theatrical agent business but he had nothing to do with Browne Vintners.

(232) Q. No, but you know him? A. Well, I know him. I haven't seen him in years.

Q. All right.

The Court: You didn't get seats to the South Pacific from him, did you?

The Witness: No, sir.

Q. The South Pacific wasn't running when you had an expense account at Browne Vintners, was it?

The Witness: That was a high class producer.

The Court: It seems as though it has been running for years.

Mr. Van Riper: I haven't seen it yet, your Honor.

Q. Do you remember having a telephone conversation with George Wood once when George was in Mexico? A. No, sir.

Q. And telling him that your partner Rutkin would be down there in a week or so? A. No, sir.

Q. And would look him up? A. No, sir.

Q. You don't recall that?

Mr. Tyne: Well, do I understand that the question is "Do you remember" or "Did you have any such conversation?"

The Witness: I don't remember and I am sure I didn't have it.

(233) Mr. Tyne: All right.

Q. All right. Now, you say, you started to say, that you gave him money in 1941. A. I gave him money in '40.

Q. Yes. When he came back from Boston? A. Yes—no, when he came back from Pennsylvania.

Q. Yes. You gave him money in '40? A. Yes.

Q. How much? A. About $3,000.

Q. $3,000. Then you gave him money in '41? A. Yes, sir.

Q. When you gave him the money in '40 the company had not yet been sold. A. In '40?

Q. Yes. A. When I gave him the $3,000?

Q. Yes. A. That was my own money.

Q. Yes, but the company had not yet been sold? A. No, sir.

Q. All right. Now, then, in '41 when you gave him money, the company had been sold? A. Yes.

Q. And how much money did you give him then? (234) A. $5,000.

Q. $5,000. And that was the money that you gave him where? In the office? A. I don't remember just where I gave him the money but—

Q. Was it in cash? A. Yes.

Q. Did you get any receipt for it? A. No, sir.

Q. Anything in writing for it? A. No, sir.

Q. All right. Now then, after you gave him the $5,000 in '41 when did you next give him money? A. Two or three days later.

Q. How much did you give him then? A. $5,000.

Q. Whereabouts? A. I don't remember.

Q. Well, now, you remember that it was two or three days later. A. Yes.

Q. But you don't remember where you parted with $5,000 or $10,000, is that right? A. I don't remember exactly the place. It might have been in Browne Vintners. He might have called me up and we went and had lunch and I gave it to him. I can't recollect.

(235) Q. Well, do you remember exactly that it was two or three days later? A. It might have been a week later. It is all a guess.

Q. No more than that? A. But it was soon after.

Q. Now, then, when was the next time you gave him money? A. When I met him at the Warwick Hotel in '42.

Q. Now, did you ever give him money to buy an interest in the Colonial Inn in Florida? A. No, sir.

Q. You knew he was buying an interest in the Colonial Inn in Florida, did you not? He told me so.

Q. He told you that; and he told you that he would want some of his money out of the sale of the company for that purpose, did he not? A. No, sir.

Q. Well, now, when you went to the Warwick Hotel is that the occasion that you talked about yesterday? A. Yes, sir.

Q. Do you know a man by the name of Ben Marden? A. I do.

Q. What's his business? A. Well, he used to have the Marden's Riviera.

Q. Yes. And he was a good customer of Browne Vintners, (236) wasn't he? A. He was.

Q. And Jim was the man whose customer he really was, wasn't he? A. Well, I wouldn't say he was his customer. Jim didn't have any customer. He was a friend of ours.

Q. Well, didn't Jim do promotional work with Ben Marden and with a lot of other people? A. Not that I know of.

(237) Q. Well, when you went to the Warwick Hotel to see Jim, wasn't Ben Marden there? A. Well, I didn't mention the—I didn't want to bring the man's name in.

Q. You are under oath. A. I didn't answe that, but I am going to answer it now. He came in and walked out and said to me, "I am glad that you came up to see Jim," and walked out.

Q. He just walked in and walked out? A. Yes, sir.

Q. Well, now, let's see about that visit to the Warwick Hotel. Before that took place you told us yesterday, did you not, that Jim talked with you in the office about $100,000? A. That was the first time in the threats.

Q. Now, can you fix the date when that threatening took place, the first time? A. I couldn't; it was the end of October or early in November.

Q. Which year? A. In '42.

Q. In '42? A. Yes, sir.

Q. '42. Now, you were still occupying an office in Browne Vintners? (238) A. I was.

Q. Although the company had been sold, you were working in effect for Seagram? A. Yes.

Q. That is this $40,000 employment you talked about yesterday? A. Yes.

Q. And Jim came in your room to see you? A. Yes, sir.

Q. As he had been doing on many occasions? A. Yes.

Q. And what did you talk about? A. He demanded—he told me his troubles and demanded money.

Q. When he started to demand money, what did he say? A. Well, he started about "Where is my money" and I said "Well, I haven't got your money, what money are you talking about?" I remind him again that I never held any of his money or had anything to do with his money and he starts saying to me that he is in debt and needs money badly. Finally he says, "I have to have $100,000." Then I said I wouldn't give it to him because I was upset what he done with the $10,000. Well then he started threatening me.

Q. Tell us what he said. Well, he walked over to my bed, it was a little ways away and put his hand in his pocket and went like this (239) (illustrating) "If I don't get the money, I am going to kill you," and walked out.

Q. Walked right on out? A. Yes.

Q. Did you give him the $100,000? A. No.

Q. And he didn't kill you? A. No, sir.

Q. Now, was that the day that you were so upset that you called off what you said yesterday was the White Rock deal?

The Court: White Horse deal?

Mr. Van Riper. No, sir; White Rock. This is my drink this time.

Q. What was this White Rock deal? A. Well, I think there was three of four stockholders which I think the company had about 250,000 shares. It was a public company and the people that was running this had about forty or fifty thousand shares. The deal was that I buy the forty thousand shares for $5 a share with a written agreement that they are going to try to get on the market for me another 100,000 shares. They are going to write to the stockholders. The shares were selling, I think, from two to

three dollars and up to five dollars the same as I was going to pay them; because I didn't want to take it over unless I got 100,000 shares. They could only produce forty (240) and I think the contract and everything was ready, and when that happened I got upset, I was afraid of my life, afraid of publicity hurting my family, my other businesses that I had; I didn't know what to do, so I just, after thinking about it about a half hour, I said, "Well, I am not going to go through with it," and I called up the agent and I told him to call it off. He wanted to know why and I just told him "Call it off, forget about it."

Q. That's all you told him? A. Yes.

Q. Now, then, confining ourselves to the moment, if you will, to the White Rock deal, you were negotiating to buy in effect the White Rock Company or a large portion of the stock of the White Rock Company? A. Yes.

Q. How long had you been negotiating for that? A. Quite some time.

Q. Weeks or months? A. I wouldn't say weeks—

Q. And with whom had you been negotiating? A. Maybe a couple of months.

Q. With whom had you been negotiating? A. A fellow by the name of Sam. I can't remember his last name, I forget it.

Q. A fellow by the name of Sam. (241) A. Yes.

Q. Had you known Sam very long? A. No, sir.

Q. How long had you known Sam before you started to negotiate with him for White Rock? A. Oh, maybe a year.

Q. You knew him for a year before you started to negotiate for White Rock? A. Yes.

Q. Did you have several conferences with him? A. Yes.

Q. Did you have conferences with any other people besides Sam about White Rock? A. I did.

Q. What other people? A. I don't remember exactly who, but I had conferences.

Q. Well, if you don't remember exactly, can you give us approximately? A. I don't remember.

Q. Can you give us an idea of any other people with whom you conferred concerning White Rock except Sam? A. I might have conferred with Sam Lentz or Joe Davis.

Q. You say you might have? A. Yes, I probably did, I don't remember.

Q. You think you did. Well, outside of the possibility (242) of having conferred with Sam Lentz or Joe Davis, who else do you think you might have conferred with about White Rock? A. I don't remember.

Q. Did you ever confer with Rutkin about buying White Rock? A. I might have.

Q. Isn't it a fact that you conferred with him and sat down in conference with Rutkin and Sam and talked to him time and time again about buying White Rock? A. I don't remember.

Q. Won't you try and tax your memory about that, Mr. Reinfeld, because it happens to be important? A. I believe that this fellow Sam, I imagine is a friend of Rutkin's. He is a broker or customer's man in Wall Street and I am not sure that I met him through Rutkin or somebody else.

Q. As a matter of fact, Rutkin is the man who brought Sam to you on the White Rock deal, isn't he? A. No, sir.

Q. He isn't? A. No, sir.

Q. Who did bring Sam to you? A. I think he just came up himself.

Q. And isn't it a fact— A. Yes, I remember now, he came up himself.

Q. Just came up? (243) A. Yes.

Q. How did Rutkin get in the picture; did you call him up? A. I don't remember I ever talked to Rutkin with Sam.

Q. Are you sure you didn't talk with Rutkin either with or without Sam being present? A. I might have.

Q. Now, then, isn't it a fact that one of the times you were negotiating with Sam for the purchase of White Rock you and Rutkin were there with Sam and you turned to Rutkin and said, "Jim, this is a good kind of business for us to get in and we can show our ownership and don't have to do any more of this front business"? A. I did not.

Q. And didn't you further say, "This is the kind of business we ought to be in, Jim; we don't have to worry about any license"? A. I did not.

Q. You definitely did not? A. No, sir.

Q. You are sure you didn't say it. Now, when you called up Sam and told him the deal was off, didn't you tell him the reason the deal was off was because that the banks didn't want to go through with their part of the proposed program? A. I had enough money to finance it.

(244) The Court: No. Did you tell him that?
The Witness: No, sir.

Q. You didn't tell that to Sam? A. No.

Q. Did you tell him anything about the banks? A. No.

Q. So you just called the deal off, right? A. Yes.

Q. Isn't it a fact that after you called the deal off that Sam became quite angry about the thing and said he lost a $65,000 commission on the deal? A. No.

Q. It isn't? Well, isn't it a fact that Sam said to you that "because you wouldn't go through with what you had promised to go through", he had lost a commission? A. Yes.

Q. He did say it? A. Yes.

Q. And isn't it a fact he wanted to sue you for $65,000 or some like amount and Rutkin said, "I won't let you do it"? A. No, sir.

Joseph H. Reinfeld—for Government—Cross

Mr. Tyne: Now, just a minute, if the Court please—

The Court: The answer is no.

Q. Isn't it a fact that Rutkin said to Sam, "You can't sue (245) Joe Reinfeld who is my partner and my friend"? A. No.

Q. And isn't it a fact that you afterwards gave Sam a check for $2,000 or $2,200? A. Yes.

Q. And that was in payment of some out-of-pocket expenses that Sam claimed he had in negotiating the White Rock deal? A. Yes.

Q. Now, going back to this day you were so frightened you called off the White Rock deal, when was the next time you saw Rutkin? A. Maybe a week or might be ten days after that.

Q. And where did you see him then? A. He walked in the office.

Q. Browne Vintners? A. Yes.

Q. And what was the conversation? A. There was no conversation. He asked me why I couldn't get him that money.

Q. Will you tell us as nearly as you can what he said? A. The same thing, "I want the money, you better get it for me," and threatened me again with his hand in his pocket.

Q. Did this take place again in your private office? A. My private office.

Q. Was there anyone else there? (246) A. No, my secretary was outside which she told him not to come in.

Q. Did you hear it? A. No, sir, she told me that after.

Mr. Tyne: I object.

Q. Well, don't tell us what she said.

The Court: Strike that from the record.

Q. You and Rutkin were in the private office? A. Yes.

Q. Were you seated at the desk or standing? A. I don't remember. I think I was standing, but I don't remember if I was sitting or standing.

Q. Did he sit down? A. No, sir.

Q. How long was he in your office? A. A few minutes.

Q. Will you tell us word for word as nearly as you can recollect what he said? A. I cannot remember every word he said; I remember he asked me for money and he raised it to $150,000 at the time, and the wind-up was the same thing as the week before, two weeks before—he threatened to kill me.

Q. Well, did he say that? A. Yes, sir.

Q. In so many word? (247) A. Yes, sir.

Q. And then did he turn around and run out? A. Walked out, yes.

Q. Before he walked out, did you say anything to him? A. I did not.

Q. Didn't say a word to him? A. I told him I wouldn't give him the money.

Q. You said you wouldn't give it to him? A. That's right.

Q. Were you afraid at that time? A. I was.

Q. You were frightened? A. I was.

Q. How old were you then? A. About 52.

Q. Were you carrying a gun? A. I didn't carry any gun.

Q. You hesitated about that answer, didn't you? A. Well, I didn't carry a gun, because I didn't understand the way you asked me.

Joseph H. Reinfeld—for Government—Cross

Q. Well, you have carried a gun, have you not? A. I did.

Q. For many years? A. No.

Q. You had a permit in this county to carry a gun?

(248) Mr. Tyne: I don't see how this is material.

The Court: How is it material?

Mr. Van Riper: I think it is material to test the credibility of this witness.

The Court: No, he didn't have a gun then.

Q. Let me ask this question: did you have a permit at that time to carry a gun? A. I think I did; I am not sure.

Q. Now, then, when was the next time that you heard from Rutkin? A. The next time when I was sick in the hotel.

Q. In the Pierre Hotel? A. Yes, sir.

Q. You were then living at the Pierre? A. Yes, sir.

Q. That was before you moved to the Waldorf? A. Yes, sir.

Q. Now, about how long after this second threat did he come to the Pierre Hotel? A. May have been a week or two. I think—

Q. I understood you to say yesterday he called up and said in effect, "I am sorry, Joe, you are sick; I would like to come up and see you"? A. Yes.

Q. And you said come on up. (249) A. Well, he apologized to me the way he spoke to me and said, "Joe, I heard you were sick and would like to come up to see you."

Q. And you said "Come on up" or words to that effect? A. Yes.

Joseph H. Reinfeld—for Government—Cross

Q. You were alone in your apartment? A. I was.

Q. Have he been there before? A. I don't think he was.

Q. Anyhow he came up and you admitted him? A. I did.

Q. You had a couple of drinks together? A. I only had one drink.

Q. You had one and he had a couple? A. Yes.

Q. It was your liquor? A. Yes, sir.

Q. As I understood you to say yesterday, to use your expression of yesterday, "We talked but not bad until he went to go away." A. That's right.

Q. And you went to the door with him? A. That's right.

Q. And he went out the door? A. He didn't go out; he just opened the door. He was (250) still in my apartment.

Q. But was the door open? A. Yes, sir.

Q. And then what happened? A. He pulled a gun out on me.

Q. Then he pulled the gun out? A. Yes.

Q. Where did he pull it from? A. His pocket.

Q. Which pocket? A. I think it was his coat pocket.

Q. And how did he hold the gun after he pulled it out? A. Just like you hold a gun.

Q. Did he point it at you? A. Yes, sir.

Q. Or did he hold it in the palm of his hand? A. No, he pointed it at me.

Q. What did he say? A. To get well, better get well and get me the money or I will kill you.

Q. Now, did he say what money? A. No.

Q. Did he say how much money? A. No.

Joseph H. Reinfeld—for Government—Cross

Q. He didn't say how much money then. But you told us (251) yesterday that he said how much money. A. I don't remember. The last time he asked for $150,000; that was the second and I believe the third time I don't remember whether it was. At that time he asked for $200,000.

Q. At that time what did you say to him? A. I didn't say a word.

Q. You didn't say a word? A. Nothing.

Q. How long did he stand there holding this gun on you? A. Just a few seconds.

Q. Just a few seconds. Then he put it back in his pocket? A. No, he just went out.

Q. What did he do with the gun? A. I don't know.

Q. Did he leave it in the premises? A. No, sir.

Q. Did he leave it out in the hall? A. I closed the door. What he did after that I don't know.

Q. The last time you saw Rutkin where was the gun? A. Well, he pulled the gun and after he said to me I shall get this money for him and used the words he is going to kill me he walked out and I closed the door.

The Court: Was the gun in his hand?

The Witness: Yes.

(252) Q. When he went out in the hall he had the gun in his hand. A. Yes, sir.

Q. Going out in the hall. A. Yes.

Q. And then he said he was going to kill you. A. Yes.

Q. Were you frightened? A. Yes.

Q. Did you think he might do what he said he would do? A. Yes, I thought he was crazy enough to do it.

Q. Now, did you report it to anyone? A. I did not.

Joseph H. Reinfeld—for Government—Cross

Q. You did not.

(253) Q. Then when was the next time you saw Rutkin? A. When he called me up and told me he was sick, at the Warwick Hotel.

Q. Which was about how long after? A. Probably a couple of weeks after.

Q. A couple of weeks after? A. (Continuing.) Or ten days, something like that. It may have been only a week.

Q. Beg pardon? A. It may have been only a week.

Q. He said he was sick at the Warwick and he wanted to see you, and he owed money? A. He said he was sick and as it sounded to me, he was crying over the telephone.

Q. And he said he wanted to see you; did he not? A. He did.

Q. And he asked you to come up and see him? A. He did.

Q. Do you recall where you were when he called you? A. I was at the hotel.

Q. At your hotel? A. Yes.

Q. And do you recall what time of day or night this was when he called you? A. I would say it was early in the day.

(254) Q. Early in the day? A. Yes.

Q. By that you mean morning? A. No, no, probably around noon or eleven o'clock or something like that.

Q. All right. Were you still confined to your apartment with your illness? A. Yes.

Q. But you got dressed and went out? A. I was much better then, I went out every afternoon.

Q. I see. A. (Continuing.) A little bit at a time.

Q. And that afternoon, when you went out, you went over to the Warwick? A. I did.

Q. And who went with you? A. Nobody.

Q. You went up to Jim's room. Had you been there before? A. I don't think so.

Q. To his room in the hotel? A. No, sir.

Q. You went up alone? A. I went up alone.

Q. Yes. You had in mind, of course, that on three previous occasions Jim had threatened to kill you? A. (255) Correct.

Q. And despite that you went alone to his room in the hotel? A. I did.

Q. I see. Were you afraid? A. I was.

Q. You were afraid? A. Yes.

Q. You were afraid that he might kill you? A. Well, the way he spoke over the telephone, I thought he was sorry for all the trouble he started with me and the threats he made, for which he apologized and then, as I said, he sounded like he was crying.

Q. Well, he apologized to you when he called you at the Pierre before he came up there, didn't he? A. He did.

Q. And then he came up there he pulled a gun on you? A. That's right.

The Court: Wait a minute. Do you want a short recess now?

Mr. Van Riper: I would like one.

The Court: All right, we will have a short recess. The jury will be excused.

Mr. Van Riper: Thank you.

(Whereupon a short recess was taken.)

(257) *By Mr. Van Riper:*

Q. Now, then, Mr. Reinfeld, we were just talking, were we not, about you going up to the hotel, the Warwick Hotel, to see Mr. Rutkin up there? A. Yes, sir.

Q. Now, is that the time that Ben Marden was there? A. He wasn't there when I came in.

Q. Did he come in later? A. He came in a few minutes after me.

Q. Were you at the Warwick Hotel with Rutkin on another occasion earlier in 1936, when Ben Marden was there? A. I don't remember being there.

Q. I beg your pardon? A. I don't remember being there.

Q. Well, were you there on any occasion when Rutkin discussed with Ben Marden or you discussed with Ben Marden Rutkin buying an interest from Ben Marden of some hotel in Florida? A. No, sir.

Q. You were not? A. No, sir.

Q. You are sure about that? A. I don't remember of any discussion between Rutkin and Ben Marden.

Q. Now, when you went to the hotel, the Warwick Hotel in (258) 1942, after all these threats and you met Rutkin there, did Rutkin threaten you there? A. No, sir.

Q. He did not threaten you. Did he act perfectly natural and nice? A. He was apologizing, telling me how he could talk to me that way, he don't know what is the matter with him, and he actually cried.

Q. Now, didn't he say to you at that time, "I am buying an interest from Ben Marden in Florida and I need some of my money from the sale of the company?" A. No, sir.

Q. And isn't it a fact that he gave Ben Marden some money there in your presence? A. No, sir.

Q. It is not so. All right. A. No, sir.

Q. All right. Now, then, you gave him $5,000, you told us yesterday, when he came downstairs in the lobby and an hour or so later you gave him another $5,000. A. Well, I gave him $5,000 around two o'clock, something like that, and then about six o'clock I gave him another $5,000.

Q. That was your own personal money? A. Yes, sir.

(259) Q. And did you have to go back to your office to get that money, or did you have it with you? A. I don't think so, I think I went down to the vault.

Q. You mean in the bank? A. Yes, yes.

Q. In New York? A. Yes.

Q. Now, did you get any receipt from Rutkin? A. No, sir.

Q. Did you get any papers from him at all? A. No, sir.

Q. Now, isn't it a fact that when you loaned Rutkin the $60,000 in '36 to buy an interest in the Vanderbilt-Dempsey Hotel in Florida, that you protested because you said, "Jim, the trouble with loaning to you is I don't know whether I will get it back." And he said, "I will give you my stock in the company as security." A. No, sir.

Q. And isn't it a fact that you finally said to him, "All right, if you put your stock as security, that is good, I will loan you the money?" A. No, sir.

Q. Now, he did give you as security an assignment of his stock, did he not? A. No, sir. Of the Browne Vintners stock?

(260) Q. Yes. A. Yes.

Q. Yes, he did.

Mr. Tyne: I object to that, "as security for the stock,"—as security.

The Witness: Not as security, no.

Mr. Van Riper: If your Honor please—

The Witness (Continuing): Not security.

Mr. Van Riper: If your Honor please, I object to that on the part of the District Attorney.

Mr. Tyne: Well, I don't think that the witness understood the question.

The Witness: I did not.

The Court: Well, then, frame it that way and don't make any suggestions.

The Witness (Continuing): I did not.

Mr. Van Riper: Will you mark that, please, for identification.

(Marked Exhibit D-5 for identification.)

Q. Now, I show you a paper, a photostatic copy, rather, of what apparently is an assignment and it is marked here D-5 for identification, and ask you if you have seen that photostatic copy, or the original of it, before?

Mr. Tyne: I will produce the original.

Mr. Van Riper: Fine. Thank you, sir.

(261) Mr. Tyne: I assume that is the original of what you have shown the witness; may I just examine it?

Mr. Van Riper: Just looking at the signatures it seems to be.

Mr. Tyne: It seems to be, yes.

Mr. Van Riper: Then I ask that you have the original marked, if I may have your paper marked, which you have produced.

Mr. Tyne: Would you mind? I am going to offer it as my exhibit, inasmuch as you have gone into it I will put it in.

The Court: You produced it.

Mr. Tyne: Yes, sir.

The Court: And Judge Van Riper accepted it, so let it be marked as a defendant's exhibit.

The Clerk: The same number.

(Original copy marked D-5 for Identification.)

The Court: It doesn't prevent you from using it, it will be in the record. If it isn't offered, you may offer it. The understanding, of course, is that after the trial the District Attorney's document will be returned to the custody of the United States Attorney, not to the custody of the defendant.

Mr. Van Riper: Oh, certainly, sir.

The Court: Yes.

(262) Mr. Tyne: May I have the right, if I see fit at the proper time in my case, to offer it in evidence if I wish?

The Court: If it is in evidence you won't have to.

Mr. Tyne: Well, is it in evidence now?

The Court: I don't know whether it is going to be offered in evidence or not; it is simply marked now as an exhibit.

Mr. Van Riper: Mr. Tyne, I will not offer it in evidence now, this is your case; I will offer it in evidence when I get the opportunity.

By Mr. Van Riper:

Q. Now, Mr. Reinfeld, I show you this paper—

The Court: Excuse me, this doesn't prevent you from using it and offering it as your exhibit if you so desire.

Mr. Tyne: Yes.

Q. (Continuing) —marked D-5 for Identification—

The Court: That is understood.

Q. —and ask you if you have seen that original before? A. I did, sir.

Q. When was the first time you saw it? A. Well, the first time when we signed it.

Q. When who signed it? A. Mr. Rutkin.

(263) Q. Yes. A. And then I lost it; I found it about a year ago, I think.

Q. And when you were asked for it in New York in '48 you could not locate it, is that right? A. Not in '48, nobody ever asked me for it.

Q. Well, in '49, whenever you were asked for it by Mr. Fried. A. When Mr. Fried asked me, that was—'49.

Q. Yes. A. Yes, I brought it to him.

Q. You brought the original to Mr. Fried? A. I brought him a copy.

Q. You brought him a photostatic copy, did you not? A. Correct.

Q. Yes, but at the time you brought the photostatic copy to Mr. Fried did you have the original? A. I did.

Q. You did? A. Yes.

Q. And I take it that you brought the original here and turned it over to Mr. Tyne? A. I gave the original to my attorney and he gave it to me back and I brought it over to Mr. Tyne.

Q. So your attorney in New York—Mr. Kiendl? A. Yes.

(264) Q. Now then, this paper that we have just referred to was signed by Rutkin at the time he got the $60,000 from you in 1936, is that right? A. Yes, sir.

Q. And that signature of Rutkin's at the bottom is his signature, is it not? A. Yes, sir.

Q. And the paper purports, the signature purports, to be witnessed by Samuel N. or R. Cohen, is that right? A. Yes, sir.

Q. And that is the Samuel Cohen who was your accountant, is that right? A. Yes, sir.

Q. And that is Mr. Cohen's signature, is it not? A. Yes, sir.

Q. You are familiar with his signature? A. Yes, sir.

Q. Mr. Cohen we have already said is dead. A. Yes, sir.

The Court: May I see that? (Referring to Exhibit D-5 for identification.)

Q. Now, then, Mr. Cohen prepared this paper, did he not? A. No, his brother, an attorney.

Q. His brother, who is an attorney, prepared it? A. Sol Cohen.

Q. Sol Cohen. But Mr. Samuel Cohen, your accountant, (265) brought the paper to your office, did he not? A. Yes, sir.

Q. You had had a conversation with Rutkin about $60,000, had you not? A. Well, as I said yesterday, Mr. Rutkin was claiming that he had 6% and that he had $60,000 coming when I told him he hadn't, and after a couple of months of disputes and arguments I decided to recognize it and he told me he was going in business, I decided to recognize his claims and told him I would pay him out in full so he can't come back and claim again.

Q. You did not pay him the $60,000 until this assignment was signed and handed to you in the Browne Vintners' office in the presence of Sam Cohen? A. Yes.

Q. That is correct? A. Yes, I paid him after.

Q. You paid him—after that you paid him the money? A. Yes.

(266) Q. Now, then, you recognized this to be an assignment of Rutkin's 6 percent interest in the outstanding capital stock of the Browne Vintners Company, did you not? A. Yes.

Q. Yes. You had loaned the money to other of your partners with their stock as collateral, had you not? A. No, sir.

Q. Did you loan Mr. Facher any money? A. I did.

Q. How much did you loan Mr. Facher? A. I think it was $10,000.

Q. And Mr. Parker had an undisclosed stock interest in Browne Vintners, did he not? A. No, sir. Yes, but he gave me a note for the $10,000.

Q. Gave you a note. Did you loan money to Mr. Kanengiser? A. I did.

Q. How much did you loan Mr. Kanengiser? A. $10,000.

Q. And Mr. Kanengiser owned an undisclosed stock interest in Browne Vintners Company, did he not? A. He did.

Q. And Mr. Kanengiser likewise gave you a note? A. Yes.

Q. Did he not? A. Yes.

(267) Q. And when those notes were not paid, you started suit against Kanengiser and Parker, did you not? A. I believe it is right, yes.

Q. You believe it is right. And you collected the money from them as a result of starting suit? A. Well, I don't know. It was Popik handling it. I asked him to collect the money and he told me—he called them up and told them he is going to—

Q. Never mind what Mr. Popik told you. Popik was handling it, and you know, do you not, that suit was started against your partners Parker and Kanengiser? A. I don't know.

Mr. Tyne: I object, if the Court please. I can't see the materiality of this line—

The Court: Well, I know we are wasting an awful lot of time.

Mr. Van Riper: Well, if your Honor please, it is very material to show a pattern here, how this man worked.

The Court: I know, but this pattern is spreading all over the lot.

Joseph H. Reinfeld—for Government—Cross

Mr. Van Riper: All right, sir. Well, it covers that.

The Court: Try to confine it as much as you can.

Q. Now, then, did you ever sue Rutkin for this $60,000? A. I didn't sue him, no.

(268) Q. Did you ever attempt to collect this $60,000 from Rutkin? A. No, I paid him on his claim.

Q. Did you ever in any way ask Rutkin for this money back? A. No, that was a forgotten thing.

Q. Forgotten. Now, isn't it a fact that you got the money back? A. I did not.

Q. That you got this $60,000 back? A. I did not.

Q. Isn't it a fact that Rutkin came to you after he disposed of his interest in the Dempsey-Vanderbilt Hotel and paid you back his $60,000? A. He did not?

Q. On his claim? A. He did not.

Q. You are sure that that's not so? A. Positive.

Q. Now, this is the only paper writing that you ever had from Rutkin concerning any of the moneys that you advanced to him until you paid him the $250,000 in 1943? A. Yes.

Q. Right? A. Yes.

Q. Is that correct? Now, you have had considerable business experience, have you not? (269) A. I have had a little, yes.

Q. You have had experience with assignments and releases? A. No.

Q. No? A. No.

Q. You did not consider this a release, did you? A. I considered it a release; I paid him and I took a release.

Q. You took a release? A. He has nothing coming; because I was afraid he might claim that same thing again.

Q. Did you read this document that Rutkin signed? A. We did at the time, yes; him and I and Mr. Rutkin.

Q. And you understood it? You understood it? A. I understood it.

Q. Is that what was said? A. Yes.

Q. Now, will you tell me, please, sir, how much money you think you advanced to Rutkin over the years—wait a minute—up until the time that you gave him the $250,000 in 1943? A. From '33 to '42 I probably advanced between 40 and 50 thousand dollars, more or less.

Q. Forty or fifty thousand dollars, more or less; from '33 to '42? A. Yes, sir.

(270) Q. It covered all those years? A. Yes.

Q. You are sure about that? A. Well, I am not positive as to the exact amount, but—

Q. Well, within a range of five or ten thousand dollars. A. It would be within the range of ten thousand dollars.

Mr. Tyne: I don't believe the witness understands the question, if the Court please.

Mr. Van Riper: Well, now, if the Court please, I don't mind an objection to the question, but why is the witness told that he doesn't understand the question when he doesn't say so?

The Court: Well, lots of times if a witness gets a wrong idea of a question it means he doesn't understand it but there would be no reason for his saying he didn't understand; he might misunderstand it. I think the objection that is made by United States Attorney is that you are asking one question with implications which he is not answering; he is answering what he conceives to be another question. Let's clarify it.

Mr. Van Riper: Let's see if we can make it so there is no misunderstanding.

The Court: No, your question was perfectly clear to me but I can see from some of the responses he has given that it is not as clear to him as it is to me.

Joseph H. Reinfeld—for Government—Cross

Q. Mr. Reinfeld, what I want to ask you is this: that (271) outside of the $250,000 which you paid to Rutkin in 1943, forgetting that for the moment, if you will, please, how much money did you advance to Rutkin?

The Court: How much money did you give to Rutkin, whether you advanced it or not? How much money did you give to him?

The Witness: Well, it is very hard to say. He used to come and see me and ask me for five hundred or two hundred. It is very hard for me to—

The Court: Well, there was this 60,000, wasn't there?

The Witness: 60—well, the 60,000 has nothing to do with it; that I paid to him for the claims he made.

The Court: All right, you paid him that. Now, aside from the 250,000, which you say he got from you by threat, and the 60,000, which you say you paid to him on account of some claim that you didn't think was valid—

The Witness: Yes.

The Court: What other moneys did you give him, under any guise, approximately?

The Witness: Approximately, as I said before, it might be—

The Court: Now, wait a minute. From what time, Mr. Van Riper?

Mr. Van Riper: Any time, from the time he went (272) in business.

Q. That's when you talked about before, from '33. A. Yes, or '34, maybe, or started in '35; I don't remember.

The Court: All right; in that time.

The Witness: I would say I might have gave him during that whole time, I would say, $40,000—

The Court: All right.

The Witness: —more or less. I don't remember.

Q. Now, that is in addition—I want to be fair to you—that is in addition to the sixty, is it not? A. It has nothing to do with the sixty.

Q. No, but it is in addition to the sixty. A. The sixty is that I—

The Court: It is apart from the $60,000 which you now say that you gave to him to buy him out of a supposed claim he had in the Vintners.

The Witness: Yes, sir; yes, sir.

The Court: Now, in addition to that 60,000, and the 250,000 that you say you gave him because he threatened you, you say you gave him $40,000?

The Witness: That includes the ten I gave him in '41 and the ten I gave him in '42.

The Court: All right. 40,000 all together, is it?

The Witness: All together, I am not sure of it.

The Court: No, you are saying approximately $40,000. (273) That's your best judgment of what you gave him?

The Witness: Right, sir.

Q. Then is this a fair statement, Mr. Reinfeld: that outside of the 250,000 which you paid him in 1943,— A. Outside of what?

Q. Outside of the 250,000 which you paid him in 1943—forget that— A. Yes.

Q. Outside of that you paid Rutkin over all the years, including this 60,000, about a hundred, a hundred and ten thousand dollars? A. No, sir.

Mr. Tyne: Of course,—

The Court: No, just put if the way it was originally put.

Joseph H. Reinfeld—for Government—Cross

Q. I understood you to say—

The Court: He gave him the 60,000 in payment of his supposed claim, he gave him 250,000 he says as the result of a threat, and then in addition to that, $40,000, over the period of years.

The Witness: Yes.

Mr. Van Riper: Fine. All right.

The Witness: I gave him 20—

Mr. Tyne: All right, that's all.

Mr. Van Riper: All right.

(274) The Witness: I can go back so that—

Q. Is this correct— A. All right.

Q. Because I want to confront you with something. A. Yes.

Q. But I want to be fair with you beforehand. A. Yes.

Q. Outside of the $60,000 and outside of the $250,000, you gave Rutkin, I understand you to say, over all the years approximately 40 to 50 thousand dollars?

Mr. Tyne: That's objected to.

A. I didn't say that.

Mr. Tyne: He is elongating it again, 40 to 50 thousand dollars. The witness said approximately $40,000.

The Court: Approximately $40,000.

Mr. Van Riper: All right; put it that way.

The Witness: Yes.

Q. Now, you stand by that, do you not?

Mr. Tyne: I object to Counsel arguing with the witness.

Mr. Van Riper: I am not arguing with him.

The Court: He has stated it. He has stated it.

Q. Now, then, I call your attention to your testimony in New York—

Mr. Van Riper: Page 274, Mr. Tyne.

(275) Q. (Continuing) —testimony which was given in New York in the same matter that we have talked about before, Mr. Reinfeld, taken on December 20, 1948, and ask you if you didn't testify as follows:

"Q. What was the sum total of the moneys that you say you advanced to Mr. Rutkin? A. I don't know. I couldn't say.

"Q. Was it 50,000? A. It was, yes.

"Q. Was it 100,000? A. It might have been, all through the years.

"Q. 200,000? A. It might have been, all through the years.

"Q. A half million dollars? A. No, sir."

Did you testify that way in New York? A. I did.

Q. Was that true? A. That's true, but the reason I said that is because I did give him all together $350,000.

Mr. Tyne: That is, including the 250.

The Witness: Including the 250. That was in my mind when those questions were asked me.

Q. Well, now, will you—

The Court: If you will just let this young man (276) testify—

Mr. Tyne: All right.

The Court: Sit down, please; sit down. Let him testify. Then if you have any objection to make, object.

Mr. Tyne: All right, sir.

The Court: But don't prompt the witness. Just object.

Q. Now, Mr. Reinfeld, when you testified in New York, did you have in mind here in this testimony that I have just read to you—did you have in mind including the 250,000 that you gave him? A. Yes.

Q. You did? A. Yes.

Q. Mr. Reinfeld, I want to be fair with you. Let me read it to you again, will you please?

"Q. What was the sum total of the moneys that you say you advanced to Mr. Rutkin? A. I don't know. I couldn't say.

"Q. Was it 50,000? A. It was, yes.

"Q. Was it 100,000? A. It might have been, all through the years.

"Q. 200,000? A. It might have been, all through the years."

Now, Mr. Reinfeld, at that time were you including in your (277) thinking a $250,000 payment? A. Yes, sir.

Q. And still you say it might have been 200,000? A. Well, he said 200; I said it might have been.

Q. Now, then, prior to the meeting which you had over here with Zwillman and Stacher and the rest of the people that you talked about at Lou Holtz' house, did you have a conversation with Rutkin very shortly prior to that, a week or a few days prior to that meeting, in which Rutkin complained to you about the fact that he was not getting what he was supposed to get from the sale of his Browne Vintners' interest? A. No, sir.

Q. Mr. Reinfeld, you said that when you got at the meeting or at one of the meetings in Holtz' house, one of the first things that was discussed was the charge that had been made against Zwillman for taxes? A. Yes.

Q. How did Zwillman know how much his tax charge was? A. Well, he voluntarily told Cohen to deduct that from the money he had coming from Browne Vintners.

Q. Well, maybe I will put it this way then: Zwillman had been furnished a sheet, had he not? A. He what?

Q. Had been furnished a statement, a piece of paper, showing where he stood? (278) A. Yes.

Q. Is that right? A. Not at that time.

Q. No, he had been furnished it some time prior, had he not? A. Yes, sir.

Q. And on that statement there was a figure for the tax charge, was there not? A. Yes.

Q. It showed that Zwillman was being charged $245,000 for taxes? A. Yes.

Q. Now, incidentally, in fairness to you, you testified yesterday that Zwillman had given you $240,000 to pay taxes? A. Yes.

Q. And you testified, I think, in answer to a question from his Honor, Judge Meaney, that Zwillman took the money out of the corporation; do you recall that? A. No, that would be wrong. I meant by that that Mr. Cohen took the money that was coming to him out of Browne Vintners, the $225,000, and gave it to me.

Q. That Mr. Cohen took the money out? A. Yes, because Mr. Cohen and Mr. Joe Davis—Mr. Cohen got the money from the—

The Court: Cohen took the $225,000?

(279) The Witness: Cohen got the money from the nominees and subsequently gave it to Mr. Davis to give it to Mr. Zwillman.

The Court: All right. Now, that $225,000 was given to whom?

The Witness: Cohen held that out.

The Court: Cohen held it out?

The Witness: Yes.

The Court: Given to you?

The Witness: Yes.

The Court: Given to you by Cohen, not directly by Zwillman?

The Witness: By Cohen.

The Court: But did Zwillman authorize that?

The Witness: Yes.

Q. That is what you meant then yesterday, is that it? Zwillman himself did not have any—he couldn't take money out of the corporation, could he? A. Joe could, his representative—

The Court: No, no; could Zwillman.

The Witness: No, no, sir.

Q. I mean he couldn't draw a check or anything on the corporation? A. No, sir.

Q. He couldn't take money out? (280) A. No, sir.

Q. So what you meant was that Cohen got that much more money from Zwillman, took that much money away from Zwillman's share when it came to distribution, is that right? A. Zwillman told him to take it.

Q. Whether he told him to take it or not, you meant that Cohen got it— A. Yes, sir.

Q. —and then Cohen turned it over to you? A. Yes, sir.

Q. All right; that's all I wanted. So then the $245,000 that had been charged against Zwillman's account had actually found its way to you? A. Yes.

Q. In actual money? A. Yes, sir.

Q. And by that I mean currency? A. Yes, sir.

Q. Cash. All right. Now, then, these statements were made up for all of the stockholders, were they not? A. There was.

Q. The stockholders of record, and the stockholders who had an interest and who were not of record; is that right? A. Well, I don't remember just exactly, but all the stockholders of record got a notice, what was coming to them.

(281) Q. Well, Zwillman was not a stockholder of record, was he, Mr. Reinfeld? A. Well, then, Mr. Cohen or Mr. Davis gave him a slip and explained to him his share.

Q. Now, had you seen the Zwillman slip before Zwillman got it? A. No, sir.

Q. Had you talked with anyone about the Zwillman slip before you went to the Holtz meeting? A. No.

Q. You hadn't talked to anyone about it? A. No, sir.

Q. Did you know that Zwillman was complaining about his slip, that is, about the figures that were on it? A. No, sir.

Q. Now, isn't it a fact that Mr. Rutkin had a conversation with you very shortly before the Holtz meeting, a few days or a week, in which he told you that Zwillman was complaining about the slip? A. He did not.

Q. About the figures on it? A. He did not.

Q. And isn't it a fact that Rutkin had a conversation with you a few days before the Holtz meeting in which he, Rutkin, said, "I have talked to Abe and I think, Joe, that you are (282) robbing us both?" A. I never heard of that.

Q. Rutkin did not say that to you? A. No, sir.

Q. And up until a few days before the meeting in Holtz' house, so far as you know, had Rutkin received a statement as to where he stood? A. He didn't have anything coming.

Q. Well, is your answer yes or no, that he had received a statement? A. No, sir.

Q. He had not received a statement? A. No, sir.

Q. Now, then, did he say to you that he wanted a statement to show what was coming to him? A. No, sir.

Q. And did you say to him, "Go to Sam Cohen and get a statement?" A. I did not.

Q. Sam Cohen was the man who made up the statements, wasn't he? A. Yes.

Q. And who knew all about it? A. Yes.

Q. Now, then, did Rutkin ever talk with you after that, (283) between the time of this alleged conversation and the meeting in Holtz' house, about a statement which he had received? A. I don't understand it.

Q. Before you had the meeting in Mr. Holtz' house, did Rutkin say to you, "I got that statement and you are doing just what I thought you were doing, Joe; you are robbing me, too?" A. Never said it.

Q. He never said it? A. I never seen him.

Q. He never said that to you? A. No, sir.

Q. Now, then, did Rutkin ever say to you, "Why are you trying to charge me $30,000 for taxes?" A. He never said it.

Q. Do you know anything about trying to charge Rutkin $30,000 for taxes? A. I don't know.

Q. Well, now, you don't know, you say. Haven't you any recollection as to whether or not you were trying to charge Rutkin $30,000 for his share of some taxes? A. I didn't.

Q. You didn't, but did Sam Cohen? A. No, not that I know of.

Q. You didn't charge anybody, yourself; Sam did that on (284) the books, didn't he? A. No, no, when he charged Zwillman with it, there was meetings and talks about it.

Q. But before the meetings with Zwillman and before the meeting in Holtz' house I am talking about— A. Rutkin never complained to me about any money coming to him, that Cohen charged to him, or anything like that.

Joseph H. Reinfeld—for Government—Cross

Q. Now, you had certain expenses in connection with the liquidation of the company, did you not, legal expenses and accounting expenses and that sort of stuff? A. Yes.

Q. And that was charged pro rata to all of the stockholders, was it not? A. Yes, deducted from the amount they received for the company, deducted from the company.

Q. Deducted from the share that was distributed, right? A. Deducted from the amount that they received for the company.

Q. Now, do you recall Rutkin saying to you, "What's this charge of $3,300 against me for a dissolution of the company or for winding up the company's business," or something to that effect? A. No, sir.

Q. Referring to a $3,300 charge? A. No, no, sir.

(285) Q. You don't. Now you told us this morning, Mr. Reinfeld, I think, what the stock paid per share, and I think you said around $2,900; is that right? A. I believe before taxes, yes.

Q. Before taxes? A. Yes.

Q. And do you know what it paid per share after taxes? A. I couldn't say.

Q. Well, would this refresh your memory, the figure of about $2,600? A. I couldn't— I couldn't really say how much.

Q. I see. But you are pretty sure that it paid $2,900 a share before taxes? A. I believe it did, yes.

Q. And by that, per share, we mean that was what the stockholder got back in 1940 or '41 when he got his money for his share of stock? A. Well,—

Q. That's what we mean by that. A. I know that there was 7½ million dollars—the company was sold for 7½ million dollars; approximately 9 million dollars were taken off for taxes.

Q. You mean 900,000, don't you? A. 900,000. Half a million was taken off for contingencies, which was deposited with the bank, and the balance was split (286) up, and after that, why, whoever had, whichever stockholder—whatever money was coming to him, he got it. I am no accountant or bookkeeper and I can't go into that; I couldn't explain it to you right.

Q. Well, Mr. Reinfeld, the half million that you talk about for contingencies was included in the 900,000, wasn't it, that was held back? A. I don't think so. I am not sure.

Q. Didn't we talk about that this morning before? A. Well, there was a 15 percent tax.

The Court: There was a half million dollars in that certificate this morning which was noted for taxes and some five hundred and some thousand dollars, and then other expenses; then 217,000, I think, left over for distribution. Isn't that so, Mr. Van Riper?

Mr. Van Riper: 217,000, yes; that was the final distribution, sir.

The Court: But there wa. $500,000 included in the 900,000.

Mr. Van Riper: I will get that sheet, sir. But the—(handing paper to the Court)—

(287) The Court: $574,000 was included for Federal Income Tax resale of assets.

The Witness: Well, I think—

The Court: That was included in the $900,000 of which $217,000 remained for final distribution to stockholders.

A. Well, whatever it is if I can explain it to you I believe I can bring it to you and tell you exactly as to the distribution.

Q. Judge Meaney has very pertinently called your attention to something I think I should ask you a question or two about for the enlightenment of the jury so there is no question about this. When you sold to Seagram as a matter of fact, what you did you did not sell Seagram the stock of Browne business, did you? A. I think we sold assets.

Q. You sold the assets of Browne Vintners to Seagram and they formed a new corporation. A. Yes.

Q. So that there was a Federal Tax to pay, a Federal Income Tax to pay by Browne Vintners Company on the sale of its assets, is that right? A. I don't know.

Q. All I want to do is to point out that that was a different tax than the capital gains tax on the sale of the stock. (288) A. The capital gains tax the individuals paid.

Q. Whoever held the stock, they paid that. A. Right.

Q. And this item in here that is being held up for federal taxes, that the Judge has just pointed out to us was to pay the tax on the sale of your assets? A. Well, I don't know.

Q. Now then, at the first distribution there was this $6,600,000 distributed, was there not? A. Yes.

Q. And at the final distribution the following year or thereabouts some $217,000 distributed. A. Well, I cannot remember the figures, but whatever it shows that's how it was distributed.

Q. Now, you said this morning that you were surprised, or yesterday,—I have forgotten which, when you were at Holtz' house and saw Rutkin come in, is that right? A. Yes.

Q. You meant by that, I take it that you did not know that Rutkin was coming? A. I didn't know.

Q. And had you not been apprised of the fact that Rutkind had been in conference with Zwillman and they were

objecting to your figures, they were going to claim more money. A. I did not.

(289) Q. Who did you expect to meet at Holtz' house? A. Stacher.

Q. Now, I am not going to go over the testimony we had this morning about the Saturday morning meeting and the afternoon meeting. You also said in answer to Mr. Tyne's question that there was a further meeting on Sunday. A. Yes, sir.

Q. Now, who was there on Sunday? A. I think there was Mr. Zwillman, Mr. Stacher, Mr. Goldstein, Mr. Kessler.

Q. That was the second time that Kessler was there? A. Yes, sir.

Q. He had been there Saturday afternoon, you say? A. Yes, sir.

Q. Now, was Rutkin there on Sunday? A. I cannot remember.

Q. You have no recollection at all? A. Probably he was.

Q. Now then, when you went together on Sunday again was Mr. Kessler still representing you and Zwillman? A. Yes.

Q. As attorney for both of you? A. Yes.

Q. Now, Mr. Reinfeld, isn't it a fact that when Mr. Kessler first came there it was suggested to him that he act as (290) arbitrator and he said no I will not act as arbitrator I am representing Zwillman and Stacher, but I will discuss it with you if you want me to and didn't he say to you, "Joe, you have your own lawyer here let him represent you." A. No, sir.

Q. He did not say that? A. No, sir.

Q. And isn't it a fact that when Mr. Kessler first came there you were represented by Mr. Popik? A. No, sir.

Joseph H. Reinfeld—for Government—Cross

Q. Mr. Popik was your lawyer at that time, was he? A. He was.

Q. And had been for many years? A. He was.

Q. Unfortunately Mr. Popik isn't here any longer either. A. No, sir.

Q. You are very definite about that that Kessler did not say that to you that, "You have your lawyer Dave," meaning Popik "represent you, I am representing Zwillman and Stacher but I will talk with you about it."? A. No.

Q. Now, isn't it a fact that at the meeting on Sunday at Holtz' house at which Kessler was present there was raised these items, the question of the tax which had been charged against Zwillman, the question of the (291) New York tax which had been charged against Zwillman; the question of a Contingency Fund; were these questions raised? A. No, sir.

Q. They were not raised? A. No.

Q. None of them? A. None of them.

Q. Which questions were raised on Sunday at Holtz' house when Kessler was there? A. They complained about the reorganization 1937 or '38. They complained about some bulk whiskey and they complained something about these dividends which I and the other stockholders turned it in to stock.

Q. Well, was there ever a time when the Federal Income Tax or Federal Income Tax, the New York State Tax and the Contingency Fund were raised against you as questions on the settlement? A. Only the tax on Saturday morning and Saturday afternoon.

Q. That was all disposed of on Saturday. A. That's right.

The Court: Saturday morning or Saturday afternoon?

A. Saturday afternoon.

Joseph H. Reinfeld—for Government—Cross.

Q. And was the Contingency Fund disposed of then too? A. Well, the Contingency Fund, whatever was coming to them (292) it was spoken of.

Q. Well, you agreed to pay it, pay their share, did you not? You agreed to pay the Zwillman-Stacher share? A. Yes, there was no argument about that.

Q. And you agreed to pay their share of your income tax, of your income tax which had been charged against you. A. That was on Saturday afternoon, I said that before.

The Court: All right, now. We will recess now until Friday morning. Tomorrow is a legal holiday and we will resume at ten o'clock on Friday morning. I shall renew my admonition to you not to discuss this case with anyone and not to permit anyone to discuss it with you. The jury will be excused first.

(Adjourned to Friday, October 13, 1950 at ten a. m.)

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(293) Newark, New Jersey.
Friday, October 13, 1950.

(Trial resumed pursuant to adjournment.)

(Appearances as before noted.)

The Court: Are you ready, gentlemen?
Mr. Van Riper: We are.
The Court: Are you ready?
Mr. Tyne: Yes, sir.
The Court: All right, send for the Jury.

(Proceedings resumed in presence of the Jury.)

The Court: Mr. Reinfeld I think was on the stand, was he?
Mr. Tyne: Yes, your Honor.

JOSEPH H. REINFELD, resumed the stand.

Cross-examination (Continued) by Mr. Van Riper:

Q. Mr. Reinfeld, the other day I asked you a question and just as we got to an answer a recess came in, the mid-morning recess, I think it was. At any rate I didn't get a clarification of it and I would like to go back if I may please, and I just want to read to you the question and answer so that you will know what I am talking about, page 140, Mr. Tyne, if you will, please—as a matter of fact on page 139 we were talking Mr. Reinfeld, about the fact that Rutkin didn't have anything left when the combine ended and that his 6% was gone, I think you told us, that you took it (294) over and Kanengiser took it over, you took some and Kanengiser took some of it. A. No, it was split, 50%.

Q. And you had some and Kanengiser had some. Now, then, I am not trying to contradict you, I am just trying to bring you back in my thinking so that we can go on from there. You said in answer to a question from the Judge "You see, you cannot go by percentage. I will explain this percentage, 17% was by Mr. Kanengiser, 6% by Mr. Rutkin, 3% by Mr. Susskind but we split Mr. Rutkin's interest because he was short in the company, he did not have any money so we split 50% amongst ourselves which we got about ten or eleven thousand dollars so far as my family is concerned." (295) It is not clear to me what you mean by that, Mr. Reinfeld, when you said that "We got about 10 or 11 thousand dollars as far as my family is concerned." A. Well, Mr. Kanengiser said there was $250,000 left, and Mr. Rutkin—

The Court: Speak up, will you, please?

A. (Continuing) So Mr. Rutkin overdrew, he didn't have anything coming. Fifty percent was the Davis-Seaman

group—they got 50 percent. The other 50 percent of $125,000 was split among ourselves.

Q. You mean— A. The Kanengiser group and the Reinfeld group and Mr. Susskind.

Q. You mean the other 50 percent of $125,000 or 50 percent of $250,000? A. Fifty percent of $250,000.

Q. Yes. Then what did you mean here by saying that you and your family got about 10 or eleven thousand dollars? A. Well, my family had at that time 4 percent apiece, which was four of them. I had 8 percent and it was split according to that percentage, which I might have got 15,000 or 16 or 18 and they got about 10 or 12 or 11—I don't remember.

Q. Then you mean that you and your family profited that much by Rutkin getting out; is that what you mean? (296) A. No, we didn't profit. He didn't have any money there.

Q. No, but you say "We got about ten or eleven thousand dollars." A. Out of the $125,000. The Kanengiser got about probably fifty, sixty, we got fifty, sixty, and Susskind got probably eight or nine.

Q. Well, was this ten or eleven thousand dollars that you were talking about handed to you in cash? A. No,—

Q. It was just a credit on the books, wasn't it? A. That was the front money.

Q. Front money? A. That went to Bowers.

Q. It was a credit on the books, right? A. That went to Bowers, that 250.

Q. And because Rutkin was out, you took over a larger percentage than you had before; is that what you said? A. I didn't, no, sir.

Q. Well, did the members of your family? A. No, sir.

—Joseph H. Reinfeld—for Government—Cross

The Court: Well, who got the 6 percent that formerly belonged to Rutkin?

The Witness: Well, Rutkin overdrew; he drew his money out.

The Court: Rutkin overdrew?

(297) The Witness: He drew his money out and there was 250,000, actually should have been 285 but Rutkin took his.

The Court: So in the division after that, Rutkin was not considered?

The Witness: No, sir.

The Court: The balance of the money left since Rutkin, as you say, had overdrawn his interest by $35,000, he no longer had any interest there?

The Witness: No, sir.

The Court: And the balance of the money was divided among the other partners in the operation?

The Witness: Yes, sir.

(298) Q. Now, at that time was there a man by the name of Callahan in your bootlegging combine? A. No, sir.

Q. Chick Callahan? A. In 1932 or '33?

Q. Yes. When the combine broke up? A. No, sir.

Q. Had he been a member of it before? A. He was.

Q. You knew Callahan? A. I did.

Q. Where did he come from? A. From South River.

Q. And how long had he been a member of your combine? A. I don't remember.

Q. Do you have any idea? A. No; but he was in before Rutkin came in.

Q. And he was in while Rutkin was in? A. For a short while.

Q. Did you know a man by the name of Felix Arnold? A. Yes, sir.

Q. Where did he come from? A. He comes from New Brunswick.

Q. Was he a member of your combine? (299) A. Yes, sir.

Q. And what percentage did he have? A. I don't remember; I think Callahan and Felix Arnold, and there was a fellow by the name of Costi.

Q. Eddie Costi? A. Yes. And there was a fellow, I think, by the name of White, I think between the four or five of them they had, I think, five or five and a half percent.

Q. They were all members of your bootlegging combine, is that right? A. Yes, sir.

Q. Now weren't they members at the time that your bootlegging combine broke up? A. No, sir.

Q. What happened to the percentage that Chick Callahan had? A. He left the company, I think it was in 1930.

Q. What happened to his percentage? A. Well, he was paid out in 1930.

Q. By whom? A. By Mr. Kanengiser.

Q. And didn't Kanengiser buy Callahan's share? A. I think he did.

Q. And didn't Kanengiser buy from Callahan a one and a half percent share? (300) A. I don't remember just what it was.

Q. Now, do you remember a time when Rutkin came to you and said, in effect, "Kanengiser wants to know what you have done with the 1½% share which he (Kanengiser) bought from Callahan?" A. No, sir.

Q. Isn't it a fact that Rutkin came to you and said, "Kanengiser wants to know about Callahan's 1½%; and he also wants to know about the other half of a percent that you have taken away from him? A. No, sir.

Q. And didn't you say to Rutkin, "Kanengiser has enough, you and I ought to have some more?" A. I had nothing to do with it.

Joseph H. Reinfeld—for Government—Cross

Q. Well, did you say that to Rutkin? A. I did not, sir.

Q. Now, then, have you told us all of the people that were in the bootlegging combine with you? A. As near as I can remember.

Q. Do you think that you have covered them all?

Mr. Tyne: Well, of course, I object. He said all that he can remember.

The Court: Well, the question is, "Do you think that that covers them all?"

(301) Mr. Tyne: Well, of course, there were different periods of time.

The Court: It is a proper question.

Mr. Van Riper: I don't care when it was; it was a bootlegging enterprise.

The Court: Do you think you have mentioned them all?

The Witness: I believe I did, sir.

Q. Did you know a man by the name of Bailey that lived down at Shark River? A. No, sir.

Q. Captain Bailey of the Coast Guard? A. No, sir.

Q. You did not know Captain Bailey? A. I did not, no.

Q. (Continuing.) Of the Coast Guard? Did you ever go to the house of Captain Bailey of the Coast Guard located at Shark River? A. No, sir.

Q. You are very definite about that? A. Yes, far as I could remember, I don't remember the name.

Q. Well, will this help you; Did you go to a house of any Coast Guard Captain at Shark River? (302) A. No, sir.

Q. You did not. All right, sir. Now, I notice as I checked the testimony, Mr. Reinfeld, and as I discussed with you yesterday, these front men who were holding stock that I apparently asked you about, I forgot to ask about

Mr. Cohen; Mr. Cohen held some front stock, too, did he not? A. Yes, sir.

Q. How many shares? A. I don't remember.

Q. Would it be a hundred? A. I don't remember. It is on the books.

Q. Do you think it would have been 90 shares? A. I don't remember, but there is a list of the stockholders.

Q. Do you know for whom Cohen was fronting? A. No, sir.

Q. When did you find out that he was fronting? A. I knew all the time.

Q. Now, I also noticed in checking the testimony that you said you had arranged with your son-in-law's brother, a Norman Levin of Vancouver, I think? A. Yes.

Q. (Continuing.) To do some fronting. A. Yes.

(303) Q. How many sons-in-law do you have, sir? A. Just one.

Q. And what is your son-in-law's name? A. Harold Levin Renfield.

Q. Harold Levin Renfield. And his brother's name is Norman Levin? A. Right, sir.

Q. Is that so? Now, did you know Norman Levin at the time you arranged for him to act as a front? A. Yes, sir.

Q. And were you in business with him at that time? A. No, sir.

Q. You were subsequently in business with Norman Levin, were you not? A. I was never in business with Norman Levin.

Q. You were never associated in business with him? A. I was, he worked for me in later years.

Q. He worked for you. Where, in the liquor business? A. No, sir.

Q. Whereabouts? A. In the real estate business.

Q. Whereabouts? A. In Newark.

Joseph H. Reinfeld—for Government—Cross

Q. Any other place? (304) A. He worked in the real estate and then he did go into the liquor business here on 1060 Broad Street, worked for me there.

Q. Were you associated together in the Tanforan Race Track in California? A. No, sir.

Q. You were not? A. No, sir.

Q. Did he work for you there? A. No, sir.

Q. Did you work for him there? A. No, sir.

Mr. Tyne: Now, if the Court please, I am going to object to that, if this is going to continue, all these extraneous matters.

Mr. Van Riper: That's all.

Mr. Tyne: (Continuing.) I object, it is immaterial.

The Court: Well, he is finished now.

Q. Did you know a man by the name of Magyar? A. I did.

Q. Where did he live? A. Somewheres in Perth Amboy.

Q. Was he a part of your bootlegging combination? (305) A. He was.

Q. What percentage did he have? A. I don't know exactly what he had because the percentages used to change a lot.

Q. Well, can you tell us about what percentage Magyar had? A. Magyar had four or five percent.

Q. Now, did you ever go with Rutkin to Bridgeton, New Jersey, to see Magyar? A. No, sir.

Q. Are you sure about that? A. As far as I could remember.

Q. Did you ever go with Rutkin to Bridgeton, New Jersey, for any purpose? A. I might have.

Q. And did you stay with Rutkin at the Cumberland Hotel in Bridgeton, New Jersey? A. I don't know if I stayed with Rutkin.

Joseph H. Reinfeld—for Government—Cross

Q. Well, did you stay at the Cumberland Hotel? A. Not with Rutkin, I don't remember staying with him.

The Court: No, did you stay at the Cumberland Hotel?

The Witness: Yes, sir.

Q. And Magyar owned that hotel or managed it or something, did he not? (306) A. No, sir.

Q. Did he have some connection with it? A. Not that I know of.

(307) Q. Well, did you see Magyar there while you were at the Cumberland Hotel? A. I don't remember seeing him.

Q. And while you were staying at the Cumberland Hotel, was Rutkin staying there at the hotel? A. I don't remember.

Q. You don't remember whether he was or not. Do you remember about what year it was that you went to the Cumberland Hotel? A. I do not.

Q. Do you recall what you went to the Cumberland Hotel for? A. I do.

Q. Did it have anything to do with Magyar or Rutkin? A. No, sir.

Q. Did it have anything to do with your bootlegging activities? A. Yes, sir.

Q. What?

Mr. Tyne: I object.

The Court: How is that material? He says Rutkin wasn't with him.

Mr. Van Riper: We will test his credibility.

The Court: I know, but this question of testing credibility, Judge Van Riper, can carry us for six months. It must be material.

(308) Mr. Van Riper: Unfortunately, this activity covers such a large period of time—

Joseph H. Reinfeld—for Government—Cross

The Court: But your question must be about material matters; if you feel this is material, certainly you may proceed.

Mr. Van Riper: I do, sir, or I would not have asked.

The Court: Proceed.

Q. Will you tell us what bootlegging activity brought you to the Cumberland Hotel? A. All I did was I went there to see some people that used to buy from boats outside. I asked if they went out if they will buy from our boats.

Q. And isn't it a fact that when you saw those people, you had Rutkin with you and you told them if they couldn't get in touch with you to get in touch with Rutkin, that he would handle it for you? A. No, sir.

Q. That is not a fact? A. No.

Mr. Tyne: Will you answer the question that is not a fact?

The Court: He says it is not a fact.

Q. Now, then, Mr. Reinfeld, I think when we adjourned yesterday or Wednesday, rather, we were talking about a (309) conversation over at Holtz' house. Incidentally, as I understood it from you, practically just as soon as you heard from Davis ~~that~~ Zwillman wanted to see you about his accou. t you made arrangements to go over right away, did you? A. No, sir.

Q. How long afterward did you make arrangements? A. I think it was three or four days, may have been a week.

Q. It was within a very few days? A. I thought you meant right away. It was within a few days.

Q. Within a few days? A. Yes, sir.

Q. And so the first time, then, I take it, that you had heard that Zwillman was dissatisfied with his account was a few days before your first meeting in Holtz' house? A. I didn't know he was dissatisfied.

Q. You didn't know that until you got there? A. That's right.

Q. Then, the first time you knew that Zwillman was dissatisfied was when you got to Holtz' house? A. Yes.

Q. What did Davis tell you about it that brought you over there? A. Just that he wanted to see me.

Q. You had no information or idea at that time as to what he wanted to see you about? (310) A. Not at all.

Q. And you say that you did not take a lawyer with you? A. No.

Q. Mr. Popik? A. No, sir.

Q. On the first occasion of your visit there? A. No, sir.

Q. Now, you had told us on Wednesday before we adjourned about the various items which were discussed there and you said that at the first meeting they discussed taxes, that is, this income tax item of 245,000; New York State taxes and contingency fund; is that correct? A. No, sir.

Q. What did they discuss at the first meeting? A. Just the taxes.

Q. Now, then, when did they discuss the contingency fund? A. On Sunday.

Q. That is the second meeting? A. Yes.

Q. Or really the third one; there was one— A. The second. Well, there was the third, yes.

Q. Saturday morning, Saturday afternoon, and then Sunday? A. Yes.

Q. Sunday afternoon or morning? A. I don't remember the exact time. It wasn't in the (311) morning; it was later on.

Joseph H. Reinfeld—for Government—Cross

Q. The contingency fund was discussed on Sunday? A. Yes, sir.

Q. And Kessler was there? A. Yes, sir.

Q. But Popik was not? A. No, sir.

Q. Now, then, did you work out the contingency fund that afternoon or that day? A. There was no question about it. There was so much money for contingency and that was open to all the stockholders and whenever we split it up, they got whatever was left.

Q. Then, did the New York State taxes come up that day? A. No.

Q. When did the New York State taxes come up? A. The best I can remember there was nothing spoke about New York taxes.

Q. Is your memory pretty clear about that? A. Yes, sir.

Q. Now, isn't it a fact that the $358,000 which Zwillman and Stacher received from you, that it was based upon the income tax that you had charged them, the New York State tax that you had charged them and their share of the contingency fund? A. There was only one tax, there wasn't two taxes.

(312) Q. You say there was or was not two taxes? A. There was not. There was no State tax involved, not that I can remember.

Q. What was the $358,000 based on? A. Well, $225,000 he had coming from that tax.

The Court: Who?

The Witness: Mr. Zwillman and 130,000, something like that that Cohen had, that was coming to him.

Q. That Cohen had that was coming to Zwillman? A. Yes.

Q. Why did Cohen have it, do you know? A. Well, Cohen was nominee for a lot of money.

Q. You say Cohen was a nominee for a lot of money. You mean, do you not, Mr. Reinfeld, that Cohen had collected a lot of money from the other nominees, the front men? A. Mr. Zwillman fronted for a lot of money. I don't know which one it was, whether it was collected from others or his own.

Q. Incidentally, that is the way the arrangement worked, did it not, when the stock was sold didn't Cohen go to the front men and get from the front men the amount of money which the front man got for his stock less the amount the front man paid for his taxes? A. Yes.

Q. That's the way it worked? (313) A. Yes.

Q. Then Cohen put that money in a fund, did he not? A. I don't know whether he gave it to him immediately, he may have held it a day or a week. Eventually he gave it to the people that it was rightly coming to.

Q. He had what you might call a revolving fund; the money came from the front man and went out to the back man, is that right? A. Yes.

Q. Now, then, you say that $225,000—you mentioned that? A. Yes.

Q. Where did Cohen get that $225,000 from? A. Well, that was Zwillman's money.

Q. It was money to come to Zwillman from the stock which was being fronted, in other words, is that correct? A. Correct.

Q. And Cohen got the 225 from those front men, whoever they were? A. Yes.

Q. And instead of giving the money to Zwillman, he gave it to you, did he not? A. Zwillman told him to give it to me.

Q. Regardless of that, Cohen gave the money to you, did he not? A. Yes, sir.

(314) Q. Do you know when Cohen gave that money to you? A. I don't remember.

Q. Well, I mean, year, what year? A. It might have been '41, it might have been '42; I don't remember.

Q. Well, having in mind now that your company was sold in '40— A. That's right.

Q. (Continuing) That you distributed $6,600,000 of money in 1940 and that you distributed the balance of 217,000 in 1941, does that help you to place the year when you received $225,000 from Cohen? A. I couldn't place the year because the nominee was drawing the money very slowly and he was holding it until, let's say, he was ordered by Zwillman—he knew from Zwillman, before the company was sold, that Zwillman owes me this money and whenever he got it, he paid it to me.

Q. Now, then, what did you do with the 225,000 that Cohen gave you? A. I put it in the vault.

Q. Put it in the vault. You didn't put it in the bank? A. No, sir.

Q. You put it in the vault, in your name? A. Yes, sir.

Q. In Newark? (315) A. Yes, sir.

Q. Did you show the receipt of that $225,000 on your income tax return? A. That was tax paid.

Q. It was tax paid? A. Yes sir.

Q. Who had paid the tax on it? A. The nominees.

Q. And that's the reason you didn't show it on your tax return? A. The money—no, I didn't show it because there was no reason to.

Q. And Cohen had told you that was tax paid—did he not? A. I knew it was tax paid.

Q. But how did you know it? A. Well, Cohen told me.

Q. That's right. A. And I knew it was tax paid.

Q. Well, you knew it because Cohen told you, number one, and, number two, because that was the system, the general plan, was it not, to have the nominees pay the tax? A. That's right.

Q. So you did not show it on your return? A. No, sir.

Q. Now, then, do you know how long you kept that money in (316) the vault before you made this settlement with Zwillman? A. I couldn't say.

Q. And is that the money that you are talking about that you got out of the vault when you settled with Zwillman? A. Yes, sir.

Q. That $225,000? A. Yes.

Q. Was it the same money, do you know? I mean the same bills? A. Probably.

Q. Probably the same bills? A. Yes.

Q. All right. Then again I say, do you know definitely how the 358,000 was made up? A. I just stated—

Q. I mean how the figure was arrived at. A. I couldn't say just how the figure was arrived at.

Q. Now, then, at the Holtz meeting or at the meeting in Holtz' house, was a claim advanced by Kessler on behalf of what you referred to as the "boys" of approximately a million dollars because of profits which they said you had made in the Reinfeld Company and which they said belonged to Browne Vintners? A. No, sir.

Q. Isn't it a fact that they made a claim against you, (317) saying that you had bought whiskey through the Reinfeld Company, in the name of the Reinfeld Company, and they sold it from the Reinfeld Company to the Browne Vintners Company and made a half million dollars profit on it and they had been cheated out of their share of that? A. No, sir.

Q. They didn't say that? A. No, sir.

Q. Did anyone say that at the Holtz meeting? A. In the first place, the bulk whiskey wasn't bought by—

The Court: No, the question is, did anyone say it at the meeting?

The Witness: Yes.

Joseph H. Reinfeld—for Government—Cross

The Court: Who was it?

The Witness: That was on Sunday, that was—

The Court: Well, who said it?

The Witness: I don't remember who said it, whether it was—

Q. Well, it was one of that group, was it? A. I don't remember who said it.

Q. Well, you didn't say it, did you, Mr. Reinfeld? A. No; there was a claim made—

Q. Yes, it was made by someone, it was said by someone who was making a claim against you? A. Right.

(318) Q. Is that right? And didn't they make a further claim against you that you had received—first of all, that you— A. Just a minute. I would like to explain about the bulk whiskey.

Q. Go right ahead. I will give you all the time you want. A. There was a group—it wasn't the Reinfeld family alone—there was Mr. Kanengiser in it, there was Mr. Lentz in it, there was Mr. Facher in it, and there was one or two others in it. It was told the partners if they want to buy bulk whiskey—bulk whiskey is just like going on the stock exchange and buying stock, because all we get for it is a warehouse receipt—whether we want a thousand barrels or ten thousand or a hundred thousand barrels; you go to a broker and you buy the receipt. I didn't care who comes into the combine as long as they put money up because I could buy, instead of a thousand barrels, I could buy a hundred thousand barrels—just like instead of buying a thousand shares of stock, I could buy a hundred thousand shares of stock. Well, Mr. Lentz put up some money, Mr. Facher, and Mr. Kanengiser, Mr. Cohen, my brothers, myself, I believe my sister-in-laws, too; and we started to buy bulk whiskey in 1935, speculation; bulk whiskey was speculative just the same as the stock market. We bought whiskey until, I think, 1937, in the fall, when

we talked it over and thought that it was time we sold it, because (319) the demand was very strong. I sold to Schenley's, I sold to Seagram's, I sold to Parke & Tilford, and, I don't remember, one or two others. There was a block of stock left, which was heavy rye whiskey. We were going—

Q. By "stock", you mean whiskey? A. We were going into blending whiskey and we were paying $1.50 to $2.25 a gallon to National Distillers and Seagrams. I came in and made a suggestion, called in all the directors, that I am selling out this whiskey, which I think I had altogether about 90,000 or 100,000 barrels; but this block, I would suggest we should buy for the Browne Vintners' use, because the whiskey would only stand me about 55 or 60 cents and I am going to let them have it for less than the market. They were very happy to have it. I told them that I will not—I don't want to tell them any price, I want them to call up two brokers. I asked Mr. Joseph Newman—he was the president, and I asked Mr. Joseph Davis, which was the secretary, to call up two brokers. One of them called up Mr. Mottsman, one called up a Mr. Klein. They were the two best brokers in New York. And if I remember correctly, they told them that that whiskey was worth seventy or seventy-five cents a gallon. They said it was perfectly all right, "We want this whiskey", and the brokers are very fine, this is the market, and "we want the whiskey". So I says, "Well, gentlemen, I am a partner in this Browne (320) Vintners; I am going to give it to you 5 cents cheaper a gallon", and that made them all happy and they accepted it. But it was only about 20 or 30 percent of the whiskey that I had.

Q. Now, have you finished? A. Yes, sir.

Q. Thank you. That was very interesting. Now, you said that you started in 1935 buying this bulk whiskey? A. Yes.

Q. *You* did, personally? A. No, sir.

Q. Who did? A. This group.

Q. All right. And whose names did you—

The Court: Which group is that?

The Witness: I don't remember what we called the company, but Mr. Lentz was in it, Mr. Facher was in it, Mr. Kanengiser was in it, Mr. Cohen was in it, and—yes, that's about all; my brothers and myself.

The Court: It was entirely separate from Browne Vintners?

The Witness: Entirely separate from Browne Vintners and entirely separate from Reinfeld.

Q. Did you have a corporation? A. I don't remember. It was either a partnership or some (321) kind of a company.

Q. How many barrels of bulk whiskey did you buy in the name of that company— A. All of it.

Q. (Continuing) —corporation, or whatever it was? A. All of it.

Q. But I don't know how much all of it was, Mr. Reinfeld. A. We had about 90 or 100,000 barrels.

Q. About 100,000 barrels. And approximately what did you have to pay for it per barrel? A. Well, I paid from about 55 cents a gallon, which would be about 27.50 a barrel, 50 gallons in a barrel, I would say up to about 65 cents a gallon.

Q. Now, that involved quite a lot of money, did it not? A. It did.

Q. Did you pay for that bulk whiskey in cash? A. No, sir.

Q. How do you buy it? Do you buy it on credit? A. Just like the stock market, you buy it on credit and you

pay in 20 percent or 30 percent. If the bank thinks well of you, they take 20 percent. If they think it is a risk, they will ask for 30.

Q. Where did the money come from that you had to put up? A. Well, I couldn't tell you right offhand but we could show it.

(322) Q. Well, Mr. Reinfeld, did it come from you, any of it? A. Yes, sir.

Q. All right. Some of it was your money? A. Yes, sir.

Q. Now, who else put in any money? A. Some Lentz put in, some Facher put in, some Kanengiser put in, Cohen, my brothers put in.

Q. You say that Facher and Kanengiser put money into this separate company, we will call it for the purposes of this discussion—they put money in that besides the money that they had in Browne Vintners? A. Yes, sir.

Q. Now, was there any evidence of ownership in this company or this— A. Oh, yes.

Q. What was the evidence? A. Well, the evidence—everybody was, whether it was a company or a partnership it was on the books, and whoever put the money in gave a check.

Q. Who ran the books? A. I believe Cohen did.

Q. And did Facher and Kanengiser have anything to show that they had an interest? A. Sure they did.

Q. What did they have to show? (323) A. They gave a check and they had a receipt, probably, and not only that, Mr. Kanengiser didn't want to sell his whiskey and he withdrew it and kept it and got a higher price later for it.

Q. Now, then, weren't you the directing head of that? Didn't you decide what whiskey was to be bought, what prices were to be paid, and when it was to be sold? A. Yes.

Q. And then there came a time, you told us, in 1937 when there were about—how many barrels left, did you say? A. I said about 20 or 25 percent of all the whiskey was sold to Browne Vintners.

Q. All right. Then, there was about 25,000 barrels left, perhaps? A. Perhaps, yes.

Q. And then you went to your partners in Browne Vintners and said that you would sell that to them below the market? A. I told them to call a broker first.

Q. But didn't you tell us a few minutes ago that you said you would sell it to them below the market? A. I did; five cents below the market.

Q. And what partners did you tell that to at the time? A. All of them.

Q. Did you tell it to Davis? A. Yes.

(324) Q. Joe Davis? A. Yes. He was the one that called the broker.

Q. Did you tell it to Harry Davis? A. No, sir. He wasn't there.

Q. He wasn't there. Did you tell it to Zwillman? A. No, it is only the board of directors.

Q. Oh, only the board of directors. And you sold it to them eventually for what? Did you say 70 cents a gallon? A. I said 5 cents cheaper, whatever it was.

Q. Yes. A. I don't remember exactly; I think it was 70 or 65. But I sold a little cheaper than the market.

Q. And that was a profit of 10 or 15 cents a gallon to you, was it not? A. I couldn't say what the profit was.

Q. Well, Mr. Reinfeld, didn't you tell us a few minutes ago that you bought it for 55 cents a gallon? A. I said some of it, and some of it 65 and I bought some of it for 70.

Q. Well, did you or did you not make a profit on the whiskey that you sold to Browne Vintners? A. I did.

Q. You did. Now, then, wasn't that one of the complaints that Zwillman and Stacher had against you in Holtz' house, that you had bought this bulk whiskey when you could have (325) bought it in the name of Browne Vintners, because didn't they say Browne Vintners had plenty of credit— A. Browne Vintners was broke at the time.

Joseph H. Reinfeld—for Government—Cross

Q. Browne Vintners was broke? A. Yes, sir.

Q. I see. A. They couldn't borrow any money unless I endorsed notes for them, at that time. I endorsed for the company notes. Otherwise they wouldn't even lend them money.

Q. For what company did you endorse notes? A. For Browne Vintners.

Q. For Browne Vintners. All right. So with that endorsement they could have brought this whiskey, could they not? A. I said the Browne Vintners Company for their own use, which they were very short in money, and unless I endorsed the note, the bank wouldn't lend them any money.

Q. What we want to get at is, Mr. Reinfeld, the conversation in Holtz' house. Now, wasn't it a charge by Zwillman and Stacher, whether they were making it themselves or Kessler was making it for them, that you had profited at their expense in the buying of this bulk whiskey? A. That was the complaint.

Q. That was the complaint. And wasn't your explanation of that that, well, maybe there were some honest mistakes but they were honest mistakes? (326) A. I didn't say so.

Q. Did you say words to that effect? A. I said words this way. I said, "Well, if you could prove I done anything wrong against the Browne Vintners Company by taking this to Court," I said, "You could take Joe Davis, who is an investor in Browne Vintners, you could take others," that "I will go to Court with you and if the Court decides against me, then I'm wrong." But I am sure I was right. And they said, "Well, we don't go to Court." So I said, "Well, then, we will have to drop it."

Q. You and your partners had never been to Court before that, had you? A. Me and my partners?

Q. Yes. A. I don't remember being in Court with any of the partners.

Joseph H. Reinfeld—for Government—Cross

Q. Now, at that time A. I was never in Court before.

Q. At the time you said "If you want to take it to Court, go ahead," was Kessler representing you? A. Yes, sir.

Q. Kessler was still representing you? A. Yes, sir.

Q. And he was also representing Zwillman? A. Yes, sir.

Q. You are sure about that? (327) A. Yes, sir.

Q. Yes. All right. Now, then, wasn't there another claim there that day, for dividends, which they said that you had gotten on stock, some of which they were entitled to and they did not get? A. That wasn't so.

Q. You mean it is not so that you got the dividends? —Is that what you mean? A. I didn't get the dividends.

The Court: No, was there a talk there that day about the dividends?

The Witness: There was talk about the dividends, yes.

Q. And didn't Zwillman and Stacher make a claim for some of those dividends? A. They did.

Q. Yes. And you objected to paying them those dividends? A. There was nothing coming—that wasn't their claim. Their claim was—

Q. Mr. Reinfeld, I am only asking you if you objected.

The Court: Wait a minute. Let him answer.

A. (Continuing) Their claim was—you see, I loaned the company money and I was getting interest—

The Court: No, what was their claim there that day?

The Witness: There was a paper dividend paid, and (328) the dividend—there was no cash dividend paid; it was on the books; and the amount was very small, and instead of taking my cash, I bought stock for it.

Q. All right. A. And they said I had no right, and I told them to take me to Court on that, too.

Q. Now, you refused to agree to their demands for the dividends? A. Yes, sir.

Q. That day. Now, then, did you make a settlement there that day, in Holtz' house, with Zwillman and Stacher for any amount? A. I think there was some amount.

Q. And what was the amount for which you made a settlement on that day in Holtz' house? A. I don't remember. Not on those two claims.

Q. No, not on those two claims but regardless of what the claims were, didn't you make a settlement with Zwillman and Stacher in Holtz' house? A. Yes, I settled everything in Holtz' house.

Q. For what figure? A. For $358,000.

Q. The amount that you eventually paid them? A. Yes, sir.

Q. Right. That was settled in Holtz' house on Sunday?

(329) A. Yes.

The Court: Now, as I understand that, that represented the money which Zwillman asked back after he had given it to you as his share of paying the tax?

The Witness: Yes, sir.

The Court: And the balance of that three hundred and some thousand dollars represented Zwillman's share in the company, in the concern?

The Witness: Yes, sir.

(330) Q. Now, then you said awhile ago that this $225,000 was paid over to you by Cohen? A. Yes.

Q. At the time it was paid over to you you thought that the money was completely yours, did you not? A. Yes.

Q. Now, Mr. Reinfeld, did you have some kind of conversation with some representatives of the Treasury De-

partment in November or December of 1949 last year, concerning Zwillman and Stacher not reporting this money in their income tax? A. Yes.

Q. Did you make an affidavit— A. Yes.

Q. —to the Treasury Department? A. Yes.

Q. Do you have that affidavit with you? A. No, sir.

Mr. Van Riper: I call upon the District Attorney to produce the affidavit.

The Court: Do you have it?

Mr. Tyne: I have a copy of it, sir, I think, a photostatic copy of it.

Mr. Van Riper: I would accept that, if you say (331) it is a copy.

Mr. Tyne: Well, I won't produce it unless the Court orders me to produce it because of the law that prohibits me from producing anything that is in my files.

The Court: I want to know why you want it produced.

Mr. Van Riper: Why I want it produced?

The Court: Yes.

Mr. Van Riper: I want to confront this witness with certain statements which I am led to believe are in the affidavit, sir. And I may say to the Court, on Tuesday night as we finished here I asked Mr. Tyne if he would get the affidavit, he did not then have it, and I am sure he didn't, I asked him to get it and I asked him to speak to Mr. Reinfeld, who was then in the court room and asked Mr. Reinfeld to produce a copy of it. So the witness was, in effect, asked to produce it. I am asking the witness more than Mr. Tyne, as a matter of fact.

Mr. Tyne: I believe this is a fishing expedition.

Colloquy of Court and Counsel

The Court: I don't know as it is a fishing expedition.

Let me see it.

(Discussion off the record at side bar.)

(332) The Court: Ladies and gentlemen of the Jury: A matter must be discussed now in your absence because it has to do with certain legal problems with which you are not concerned. You will therefore be excused during the argument.

(The Jury withdrew.)

The Court: Judge Van Riper, as I understand it, you have asked—now I think you had better listen to what I am saying so that you will know what you are talking about—that is, not directed to you—you have asked the Government to produce a copy of the affidavit filed in certain proceedings which affidavit was made by this witness. The affidavit is part of a file of what?

Mr. Tyne: In another case involving Abner Zwillman.

The Court: All right.

Mr. Van Riper: Now, if your Honor please, of course I do not want the file in the other tax case and I do not want anything the District Attorney has in his office which is not pertinent or proper in this case. And at this moment I do not want anything he has in his file except this affidavit.

(333) Now, I am perfectly willing, sir, to direct my question to the witness, to ask him to produce the affidavit. I don't know but I am sure that the witness would testify in the affirmative if I asked him if he, or his attorney, had a copy of the affidavit and if it could be produced, and this request upon the

District Attorney is merely one of convenience and that was the reason that I made it to the District Attorney.

The Court: All right. Suppose you proceed the other way because if it is part of the record of a proceeding in another case I will not order it produced.

Mr. Van Riper: May I proceed now that way?

The Court: Have the jury back then. And then if there is any further argument on this matter we will dismiss the jury again.

Mr. Van Riper: All right.

(The Jury returned.)

By Mr. Van Riper:

Q. Mr. Reinfeld, we were talking about an affidavit which you said you signed last November or December. A. Yes.

Q. Do you recall the date when you did sign it? A. No, sir.

Q. Where did you sign it? (334) A. At Kiendl's office.

Q. At the office of Mr. Theodore Kiendl in New York? A. Yes.

Q. Mr. Kiendl being your attorney in New York, right? A. Yes.

Q. Now, do you have a copy of the affidavit? A. I have not.

Q. Does Mr. Kiendl have a copy? A. He might.

The Court: Speak up, please.

A. He might.

Q. Did he keep a copy at the time it was signed? A. I don't remember.

Q. You don't remember. Will you inquire from Mr. Kiendl and see if he has a copy of the affidavit? A. I will.

Q. And will you produce the affidavit? A. If he has it I will.

Q. If Mr. Kiendl has a copy of it? A. Yes.

Q. And will you do that as soon as you can after you get off the witness stand so we may not have to wait too long for it? A. I have to go to New York.

(335) Q. Will you talk to him on the telephone?

The Court: I think Mr. Kiendl is presently engaged—

Mr. Van Riper: In the trial of some school teacher.

The Court: —before Commissioner Marsters over there, so he may not be able to reach him by telephone through the day, but get in touch with him as soon as you can.

Q. Now, do you recall what you said in that affidavit? A. I don't recall exactly.

Q. Well, do you recall whether or not in the affidavit you talked about the $225,000 which was paid to Zwillman? A. I did.

Q. And do you recall whether or not you said in that affidavit that Coffen had paid the $225,000 to you and that then you gave it back to Zwillman on May 23rd? A. Yes.

Mr. Tyne: I object. I object; if counsel has a copy of this affidavit I ask him to produce it right now.

The Court: Have you a copy of the affidavit?

Mr. Van Riper: If the Court please, I said before——

The Court: No, just answer the question yes or no.

(336) Mr. Van Riper: No.

The Court: Have you a copy of the affidavit?

Mr. Van Riper (Continuing): But, as I said before, I have some information about it.

The Court: He says he has no copy of the affidavit.

Mr. Van Riper: I have some information which has been furnished to me about it.

Now, you see we wouldn't have this trouble if you would just let us use the affidavit.

The Court: I will not permit the side comments to be made.

Mr. Van Riper: You are right, and I apologize to the Court.

The Court (Continuing): Because they are unfair.

Mr. Van Riper: Now, Mr. Stenographer, will you repeat the question and answer?

The Court: I direct you ladies and gentlemen of the Jury to ignore completely the side snide comment made by Mr. Van Riper.

(Question and answer read by the Reporter.)

Q. Do you recall whether or not you told him in that affidavit how the $358,000 was made up? How the figure was made up? (337) A. I don't remember just exactly, no.

Q. You mean that you don't remember whether you told him in the affidavit or you don't remember how it was made up, Mr. Reinfeld? A. I remember that there was $358,000, the total sum; there was a hundred and thirty five some odd thousand dollars—

Q. I don't want to interrupt you—

The Court: Do you remember whether or not in that affidavit you explained how that $358,000 was made up?

The Witness: Yes, there was 225 and 135, or something thereabouts covered some claims in money that Cohen asked for.

Q. Did you tell him anything in the affidavit about the meeting in Holtz' house? A. I don't remember.

Q. Did you tell him anything in the affidavit about the other claims which Zwillman and Stacher were making against you? A. I did.

Q. Did you tell them anything in the affidavit about the fact that you had agreed on Sunday at Holtz' house to pay $358,000? A. I did.

(338) Q. You did. Did you tell them in the affidavit that you had agreed on Sunday at Holtz' house to pay Rutkin $250,000? A. That was on Saturday.

Q. Did you tell him in the affidavit that you had agreed at Holtz' house on Saturday—

Mr. Tyne: I object. I don't think he understands that.

The Court: The question is perfectly clear. If he doesn't understand let him say so.

Q. Did you tell him in the affidavit that you had agreed on Saturday at Holtz' house to pay Rutkin $250,000? A. I don't think I mentioned Rutkin.

Q. You don't think that you did? A. No.

Q. You told us a little while ago that you did agree to pay $358,000 to Zwillman at Holtz' house? A. I think that was on Saturday.

Q. You think that was on Saturday? A. I think so.

Q. Now, you said the other day that after that you went into a room with Rutkin. A. Before—yes, yes.

Q. Before you went in the room with Rutkin, Mr. Reinfeld, you had agreed to pay Zwillman $358,000, had you not?

(339) A. I agreed.

Q. And it was after that that Kessler said you should go into a room, did he not? A. He did.

Q. Was anything said just before Kessler said go in a room? A. No, when we were settled with Zwillman Mr. Kessler said, "What are you going to do about him?", He was standing alongside of us.

Q. About who? A. Mr. Rutkin. I said, "Well, what is his claim, what claims has he got?" Something like that. Kessler said, "Well, you've been friends for a long time, you've been sleeping together, go in the other room, give him some money and get rid of him."

Q. Did he infer what you should give him the money for? A. No, sir.

Q. Now, at that time Kessler was representing you, was he not? A. Yes, sir.

Q. And did you say—as a matter of fact Mr. Kessler had represented you for years on several occasions, had he not? A. I think he represented me through Mr. Popik once or twice.

(340) Q. Well, you mean Mr. Popik engaged Mr. Kessler? A. Yes.

Q. Did Mr. Kessler represent you? A. No—yes.

Q. Let me put it this way. Mr. Popik was your regular counsel, was he not, handling all matters for you? A. Yes.

Q. And on occasion when you had special matters Mr. Popik would call in Mr. Kessler to be your counsel in certain matters? A. Yes.

Q. And so Kessler had represented you for a period of time. A. Once or twice.

Q. And you had complete confidence in him? A. Yes.

Q. Now then, when Kessler said to you, "Go into the room with Rutkin, you have slept together for a lot of years and settle things for him," did you say to Kessler,

"Why Rutkin has been trying to hold me up with a gun." A. I did not.

Q. Did you say anything to Kessler about the fact that Rutkin had threatened you? A. No.

(341) Q. Did you say anything to Kessler of the fact that you did not owe Rutkin anything? A. Well, I asked Kessler what his claim was and Kessler told me to go in the room, give him some money and get rid of him.

Q. Now, you had been fighting, and I don't mean that in a vicious sense, but you had been arguing back and forth for some time with Kessler and Zwillman and Stachor, respecting their claims, had you not? A. Yes.

Q. I mean you had been refusing to recognize or settle their claims. A. Not the tax claim, the claims that they made I didn't think they were entitled to make.

Q. That's right, you had been resisting those claims. A. Yes.

Q. By means of perfectly proper business discussion around the table. A. Yes.

Q. And all of a sudden Kessler said, "What are you going to do with Rutkin." A. We were through with them.

Q. After you had finished resisting the claims you said "I will pay him $358,000" is that right? (342) A. Well, I don't know that it was that way.

Q. In effect isn't that what it amounted to? A. Yes.

Q. And they in effect said they would take it? A. Yes.

Q. Then Kessler said, did he not, "Now what are you going to do with Rutkin?" A. Yes.

Q. And you said, "What claims does he have?" A. Yes.

Q. And did Kessler answer that? A. No, he just told me to—

Q. Did Kessler say to Rutkin, "Jim, what claim do you have here?" A. No, sir.

Q. Was there ever a time at any of the meetings in Holtz' house when you heard Kessler say to you, "What is

Rutkin doing here?" and you said, "He has the same claims that your people have." A. I didn't get that.

(Question repeated by the Reporter.)

A. No, sir, I never did.

Q. Was there any time anywhere when Kessler said that to you, "What is Rutkin doing here?" And you said, "He has (343) the same claims as your people have", meaning Zwillman and Stacher? A. No.

Q. Your memory is very clear on that? A. I am pretty sure.

Q. That Kessler never said that to you and you never said that to Kessler? A. No.

Q. Now, when Kessler said to you about going in the room with Rutkin was that the same day on which Rutkin had threatened you at Holtz' house? A. Yes.

Q. And how many hours about after Rutkin had threatened you did Kessler tell you to go in a room? A. Well, I believe that when Rutkin threatened me it was about twelve o'clock noon time. Kessler came back about three.

Q. Incidentally, speaking about noon time Holtz is your brother-in-law by virtue of the fact that Mrs. Holtz is your sister; isn't that right, Mr. Reinfeld? A. Yes.

Q. And Kessler left and went away and then came back? A. Not that same day.

Q. He wasn't there in the morning? A. Not that same day.

(344) Q. But after Rutkin threatened you in the morning Rutkin stayed on at your sister's house? A. No.

Q. Rutkin didn't stay there? A. No.

Q. Rutkin left? A. Yes.

Q. With whom? A. With Mr. Zwillman, Mr. Stacher and Mr. Goldstein.

Q. What time of day did they leave? A. I said around noon.

Q. On Saturday? A. Might have been one o'clock, twelve o'clock or twelve thirty.

Q. That was on Saturday? A. Yes.

Q. Didn't Rutkin partake of a luncheon there which was served by Mrs. Holtz? A. No.

Q. In the basement room of Holtz' house? A. No, sir, not the way we felt about it.

Q. Not the way what? A. The way we felt upset about it, there was no lunch served at all.

(345) Q. Did Mrs. Holtz serve a luncheon to you gentlemen on Saturday or Sunday? A. If I remember correctly there was no luncheon served when they left I think she brought out some sandwiches and just the family ate a sandwich and a drink.

Q. That was on Saturday? A. Yes.

Q. And you are sure that Rutkin didn't stay there? A. No, sir.

Q. Now then, you went in the room with Rutkin right after Kessler told you to? A. Yes.

Q. Where was that room? A. Right there in the cellar.

Q. A partitioned off room? A. Yes.

Q. A complete room by itself? A. Yes.

Q. I mean there was no one— A. I don't remember exactly. But it was a complete room, it was a wall.

Q. Were you in a corner of the big room or in a room by yourselves? A. In a room by ourselves.

(346) Q. No one there but you and Rutkin? A. Yes.

Q. Now, have you said anything to Rutkin that day since he had threatened you in the morning? A. Not until when we got in by ourselves.

Q. So when you got in the room by yourselves what was the first thing that was said and who said it? A. I don't remember exactly I think it was me.

Q. Think it was what? A. I think it was me.

Q. What did you say? A. I asked him what he wants.

Q. What did he say? A. He said a half a million dollars.

Q. What did you say? A. I said, "You started out one hundred, then two hundred now you want a half a million: I am not going to give it to you."

Q. What did he say? A. He says, "Well, what will you give me?" I said, "I don't know." He said, "I will take $250,000." I thought for a second, I was disgusted, I wanted to get rid of it anyway and I said, "All right." And I walked out.

Q. You agreed—beg pardon? (347) A. And I walked out.

Q. Now, this is the fact, is it not, that after you had had the discussion with Kessler, Zwillman and Stacher and you had agreed to settle Zwillman and Stacher's claims by paying them $358,000, you agreed in the separate room to pay Rutkin $250,000? A. Yes.

Q. And the only discussion that took place in that room with you and Rutkin alone was what you have now told us? A. That's right.

Q. You showed no more resistance than you have told us? A. No I had no more resistance left.

Q. You didn't argue with him in any way? A. No, sir.

Q. You didn't open the door and tell Kessler he was holding you up? A. No.

Q. Now, you went out in the room? A. Yes.

Q. When you went out in the room were Kessler and the rest in the big room? A. Yes.

Q. What did you say when you got in the big room? A. I said to Kessler—I don't exactly remember the words (348) but it was settled.

Q. Did Rutkin say anything? A. I don't remember.

Q. Did you shake hands? A. No, sir.

Q. Did you say, "It is settled for $250,000?" A. I don't remember just the way I said it.

Q. That was the fact, that it had been settled for that? A. Yes, sir.

Q. Now then, how much longer did they meet there? A. Not very long, they left.

Q. Who left? A. They all left.

Q. Everybody except Holtz and yourself? A. My brothers and Sam Cohen.

Q. All right. Now then, you said in your previous testimony that on the following day, on Monday, you got word to go up to Sam Kessler's office. A. Yes.

Q. Who gave you that word? A. I think it was Stacher.

Q. How did he get in touch with you? A. He called me up.

Q. In New York? (349) A. No, I think he called me on Sunday while I was still at my sister's house.

Q. By the way, where were you living at this time? A. I was living at the Pierre.

Q. The Hotel Pierre in New York? A. Yes.

Q. And he called you at your sister's house,—you mean Mrs. Holtz' house? A. Yes.

Q. And he said that Sam Kessler wanted to see you? A. Yes.

The Court: We will have a recess now for five minutes.

(A short recess was taken.)

(350) Mr. Tyne: If your Honor please, I have a witness here who has an important matter, he would like to attend to, and I asked Mr. Van Riper if he would consent that I call him now and permit him to get away.

Mr. Van Riper: I would be very glad to accommodate the District Attorney for the witness.

The Court: All right, will you step down, please?

The Witness: Thank you.

(Witness temporarily excused.)

Mr. Tyne: Mr. Holtz.

LOUIS HOLTZ, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. Tyne:

Q. Mr. Holtz, where do you reside? A. 24 Wilbur Avenue, Newark.

Q. And what is your business? A. I am in the whiskey—I am in charge of a wholesale wine and liquor house.

Q. What is the name of that? A. Joseph H. Reinfeld, Incorporated.

Q. That is named after Mr. Reinfeld who was on the stand just prior to you? A. Yes, sir.

Q. Are you related to Mr Reinfeld? (351) A. I am.

Q. How long have you been in that business? A. How long have I been in the business?

Q. Yes, that particular business, Joseph H. Reinfeld and Company. A. How long have I been associated with him?

The Court: How long have you been associated with the Joseph H. Reinfeld company?

The Witness: Since 1934.

Q. Now, you are the Holtz who has been referred to in the testimony of Mr. Reinfeld, are you not? A. Yes, sir.

Q. And was it at your home that this meeting that has been referred to was held in 1942, December of 1942? A. What was that question, please?

Q. Was it at your home that this meeting was held at in 1942, attended by Mr. Reinfeld, Mr. Zwillman and others? A. Yes, sir.

Q. And how many meetings were held there in December of 19— commencing in December, 1942? A. There were three meetings.

Mr. Van Riper: I can't hear.

The Witness: Three meetings.

Q. Will you keep your voice up? A. Three meetings.

(352) Q. When was the first meeting held? A. On Saturday morning.

Q. And the second? A. In the afternoon.

Q. Of the same day? A. Yes, sir.

Q. And the third? A. The following day.

Q. And where were these meetings held, in what part of the house? A. Well, there is a recreation room in the basement.

Q. Will you just describe the layout there? Is it one room or more than one room? A. No, there is a large rom, sort of a sunken-in room, and then there is, as you enter down the basement, there is a bar room and then to the left of the barroom there is an entrance to a laundry, which is a separate and distinct room of the other two, and then there is a vestibule that leads you to a lavatory.

Q. Is there one room that is closed off by a door? A. Yes, sir.

Q. Do you recall who attended this Saturday morning meeting? A. I do.

Q. Who was present? A. There was Mr. Zwillman, Mr. Stacher, Mr. Rutkin, Mr. (353) Goldstein, Mr. Cohen, Mr. Joseph Reinfeld, Mr. Sol Reinfeld and Mr. Samuel Reinfeld and myself.

Q. Samuel Reinfeld was there, too? A. Yes, sir.

Q. And he is a brother to Joseph Reinfeld, is that so? A. Yes, sir.

Q. Now, did the conversation take place there between Zwillman and Mr. Reinfeld? A. Well, there was a lot of conversation there.

Q. To what did the conversation that Mr. Zwillman engaged in with Mr. Reinfeld relate? A. It was over questions of monies and figures and—to be truthful, it was all Greek to me, I wasn't acquainted with any of the controversy.

Q. You were not familiar with it, is that so? A. That's right.

Q. But you know that negotiations were being carried on, and there were conversations between Zwillman and Mr. Reinfeld? A. That's right.

Q. Now, during these discussions carried on between the individuals I have just mentioned, did Rutkin participate in those, as far as you recall? A. Not very much, no, I don't think so.

Q. Now, did Rutkin have anything to say that morning directly to Mr. Reinfeld? (354) A. Yes.

Q. Was there anybody asked to leave the room by Mr. Rutkin? A. Yes.

Q. What did Rutkin say, if anything, with regard to that? A. Well, he just asked a couple of people to go upstairs for a while.

The Court: Who? Who were they?
The Witness: Mr. Cohen and Mr. Goldstein.

Q. And did they leave? A. They did.

Q. After they left, did Rutkin say anything? A. Yes.

Q. What did he say, and to whom did he say it? A. Well, his remarks were directed to Mr. Reinfeld.

Q. And what did he say? A. Well, I just can't repeat the exact words, but I think I will try to explain.

Q. The substance of what he said. A. Well, he said—he got up in a huff and he said that, "If I don't get my money, if I have to kill you and your whole family in the attempt, I will do so," or something to that effect.

Q. All right. And did he say anything more? A. No, there was nothing more said; everybody was just stunned by his actions.

(355) Q. What happened after that? A. Well, nothing very much happened after that, Mr. Cohen and Mr. Goldstein, I think, came back again, and, as I said before, it was sort of a shock to the whole family, the effect of those remarks.

Q. Well, did Rutkin subsequently leave? A. Yes, everybody subsequently left with the exception of Mr. Cohen and my brother-in-laws.

Q. Did you remain there? A. Yes, sir.

Q. And what time was it when they left? When I say "they left," I mean Rutkin and that group. A. Well, it was towards noon, it may have been around one o'clock or quarter to twelve; nobody kept track of time.

Q. Did Rutkin remain there for lunch? A. No, sir.

Q. Did he subsequently return in the afternoon? A. He did.

Q. Now, at any later date did you have a conversation with Rutkin? A. Only over the telephone.

Q. And how long after this cellar meeting did this conversation take place? A. Oh, that was, I just don't remember how long, several weeks. It was after the first of the year.

(356) Q. And did he telephone you at your house? A. No, he telephoned me at the office.

Q. That is, the Joseph H. Reinfeld company? A. That's right.

Q. And did he say who it was that was calling? A. Yes, he identified himself.

Q. And did you recognize his voice? A. I did.

Q. Will you tell us what the conversation was or what he said, I will put it that way? A. Well, it was during the time when Mr. Reinfeld was sick in the hospital and he mentioned something about Joe being sick and he intimated—

Mr. Van Riper: Now, if the Court please—

Q. No, tell us—

The Court: Tell us to the best of your recollection what he said.

The Witness: He said, "If anything happens to Joe," meaning if he dies, that he is going to hold the family responsible for monies he is claiming.

Q. Yes. What else did he say? A. Well, if he doesn't get it, he will kill the whole family.

Q. Did he say anything further? A. No.

Q. Did he hang up after that (357) A. Well, I just told him that isn't going to get him anywheres and as far as we are concerned he can go and jump in the lake, or something to that effect.

Q. Did you have any further conversation with him? A. Never.

Q. You say you fix that time several weeks or a month after this cellar meeting that you referred to? A. Yes. It could have been a month or three weeks.

Q. And Mr. Reinfeld was then in the hospital, is that right? A. Yes, sir.

Mr. Tyne: Cross-examine.

Cross examination by Mr. Van Riper:

Q. Mr. Holtz, this house is at 24 Wilbur Avenue, did you say? A. Yes, sir.

Q. And that is your residence? A. Yes, sir.

Q. And at that time, when this conversation took place, was anyone living there beside you and Mrs. Holtz? Mr. Reinfeld was not living there at that time? A. No, sir.

Q. Had Rutkin ever been there before? A. I believe he had been, yes.

Q. Many times? A. Several times.

(358) Q. He was there before on perfectly social visits? A. It could have been social visits and some other discussions.

Q. Well, business? A. Yes.

Q. (Continuing) Pertaining to the liquor business? A. Yes.

Q. How long had you lived at 24 Wilbur Avenue, Mr. Holtz? A. Since 1920.

Q. 1920. And how long have you known Rutkin? A. Oh, I have known Rutkin quite a while, knew of him, and then I got much better acquainted with him in '39.

Q. You were friendly with him over a period of years? A. Well, I wouldn't say friendly; I knew him, knew of him. We never had any conversation at any time.

Q. Were you and Rutkin in the Army together? A. No, sir.

Q. Or the Navy? A. No, sir.

Q. Were you in the Army or Navy- A. No.

Q. All right. Now, weren't you acquainted with him pretty well during the 1920's, the late '20s? A. No.

(359) Q. Were you engaged in the bootlegging business. A. I was.

Mr. Tyne: I object to this, if the Court please. It is outside the scope of the direct examination, and I think it is immaterial.

The Court: No, I think he is trying to show that there might be some motive. I don't know what it is. Go ahead.

Mr. Van Riper: I am trying to show a relationship.

Q. And you were a part of the combine of which your brother-in-law, Joe Reinfeld, was the head, were you not? A. That's right.

Q. And you worked with Rutkin in the bootlegging business, did you not? A. No, not—I never worked with Rutkin in it.

Q. Well, you knew that he was a partner in your combine, did you not? A. Yes.

Q. And you worked on the ships in Canada, did you not? A. Yes.

Q. And you saw Rutkin in Canada, did you not? A. Well, I may have seen him there, yes; only—

Q. And do you remember having a discussion with Rutkin while you were on a ship loaded with liquor, concerning (360) intimidating you or threatening you?

The Witness: I didn't get that question, your Honor.

Q. Do you remember having a discussion with Rutkin while you and he were on a ship loaded with liquor, during Prohibition days, in which you discussed what you would do if people threatened you or tried to intimidate you? A. I was never on a ship with Rutkin.

Q. Were you on a ship without Rutkin? A. Yes, sir.

Q. You were a supercargo? A. That's right.

Q. And that is what? A. Well, I was in charge of the cargo.

Q. And that was taking the liquor out from St. Pierre, out to the 12-mile limit, is that right? A. That's right.

Q. And then bringing it into the United States on the other end? A. I didn't bring any whiskey in.

Q. You didn't bring any in. A. No.

Q. Did you participate in it after it got here? (361) A. No, sir.

Q. Didn't have anything to do with the sale of it? A. No, sir.

Q. With the transportation of it? A. No, sir.

Q. You had nothing to do with liquor in the United States? A. No.

Q. Just rum running?

Mr. Tyne: Now, I object, if the Court please.

The Court: He has described what he did, Mr. Van Riper.

Mr. Van Riper: All right, sir.

Q. Now then, did you ever have any arguments with Rutkin while you and he—

The Court: I don't know that we need to be very delicate about this because all of these laddies seem to have been engaged in a practice which was frowned upon by the law.

Mr. Van Riper: I have tried to be very plain about it in my questions.

The Court: I know. I don't see any reason to be delicate.

Mr. Tyne: I was simply about to object to it (362) as calling for a conclusion; that was all.

Q. Did you ever have any argument with Rutkin while you were in the bootlegging combine? A. Never.

Q. You continued to be in the combine until the end, did you not? A. Yes, sir.

Q. And then you became a stockholder and partner in Browne Vintners? A. That's right.

Q. Did you not? How much interest did you have in Browne Vintners? A. About 4%, I think.

Q. How many shares of stock did you have, do you know? A. I can't remember that. I think the record will disclose that.

Q. Do you know—was any stock fronted for you? A. There was.

Q. How much? A. In dollars I could—about $60,000 or thereabouts.

Q. About $60,000. Did you get the $60,000? A. Did I get it?

Q. Yes. A. I don't understand that.

(363) Q. You said there was about $60,000 of stock being fronted for you. A. That's right.

Q. Maybe I had better ask this question first: Do you mean $60,000 as the cost or $60,000 as the sales price, when the company was finished? A. $60,000 as the cost.

Q. $60,000 as the cost. And that would mean about what, as the sale price? A. I wouldn't know that. I think the record will explain all of that.

Q. But don't you have any recollection? A. I wouldn't want to go by my recollection.

Mr. Tyne: I object to this line of questioning because it has nothing to do with any claim Rutkin might have in any stock or any fronting—back or front.

The Court: It wasn't backwards, it was front. It was until he got it back.

Mr. Tyne: Well, it has no relationship here.

The Court: Do you know anything about the value of the stock, at any particular time?

The Witness: Not very much, your Honor. The records—I am referring to the records.

Mr. Van Riper: Well, you see, if your Honor (364) please—you will recall that the witness—

The Court: You may ask him what he got out of it, if you want to.

Mr. Van Riper: All right.

Q. When your stock was sold what did you get out of it? A. Well, I think that that was more or less explained the other day.

Q. No, you explain it now. A. I wouldn't attempt to.

Q. Well, now— A. I just don't know.

The Court: Don't you know what you got?

The Witness: I think the records will disclose.

The Court: Do you know what you got?

The Witness: No sir. Whatever I got the records will disclose what my stock holdings were, and whatever it brought, that's what I got.

The Court: No, I mean the question is, when this combine was broken up, you say you had put $60,000 in it.

The Witness: I put more than $60,000 in it but 60,000 was fronted.

The Court: 60,000 was fronted. Well, what did you get out of it?

(365) The Witness: Why, I explained that, your Honor, that I just don't know. The records will disclose that.

The Court: You don't know how much money you got out of it? When there is so much that you don't remember?

The Witness: Well, somebody mentioned here the other day it was 30, $30 a share, and whatever shares I held—

The Court: Well, I don't know what shares you had. We are trying to find out.

The Witness: Well, do you want me to explain what I had?

The Court: I want you to explain what you got out of it.

The Witness: Between my wife and I we had $125,000 invested in the Browne Vintners.

The Court: And what did you get out of it, between you and your wife?

The Witness: Well, whatever it multiplies by—29 by 30.

The Court: Well, that would be a little over three million dollars. All right.

The Witness: No, it wasn't that much, your Honor.

(366) The Court: All right.

Q. Well, do you think that's an approximate figure that you got, around three million dollars, out of it? A. No, sir.

Q. Did you get two million dollars out of it? A. No, sir.

Q. Did you get a million dollars out of it? A. No, sir.

Q. Did you get three-quarters of a million? A. No.

Q. Did you get a half a million? A. No.

Q. Did you get a quarter of a million? A. More than that.

The Court: Well, between a quarter and a half a million.

Q. But you had $125,000 invested. A. That's right.

Q. Now, who did you get your money from, when you got it out? A. From Mr. Cohen.

Q. You said that you had 60 shares that were being fronted. Who was your front man? A. I wouldn't know that.

(367) Q. Who arranged to do your fronting? A. I guess Mr. Cohen did that.

Q. Was the tax paid on the money which you got from Mr. Cohen? A. It was.

Q. By the front man? A. Yes, sir.

Q. Did you report that money in your return? A. Yes, sir.

Q. What? A. Well, whatever I had to report, I reported.

Q. But did you report the money that you got from Mr. Cohen that came from a front man? A. Well, if it was tax paid I didn't have to report it.

Q. I asked you, did you report it, Mr. Holtz?

The Court: You didn't report any sums on which the tax had been paid, did you?

The Witness: I didn't get that question.

The Court: You did not report in your return any sums of money upon which the tax had already been paid.

A. That's right.

Q. And the money which Mr. Cohen gave you, coming from front men, he told you the tax had been paid on it, didn't he? (368) A. That's right.

Q. Now then, getting down to the meeting, when did you first find out that there was going to be a meeting, Mr. Holtz? A. What meeting is that?

Q. The meeting that you have testified to in answer to the District Attorney's questions.

The Court: The first meeting, on Saturday morning.

A. Several days ago.

Q. Several days ago? A. About two or three days ago; about two or three days before it happened.

Q. Two or three days before it happened. And from whom did you find it out? A. From Mr. Reinfeld.

Q. And did he tell you at the time who was going to be at the meeting? A. Yes, sir.

Q. Who did he tell you was going to be there? A. Mr. Zwillman, Mr. Stacher.

Q. Is that all? A. That's right.

Q. Now then, Rutkin came with him? (369) A. That's right.

Q. Did he not? And Goldstein came with him? A. That's right.

Q. And Cohen came with them, or did he come with Mr. Reinfeld? A. Cohen was there when they got there.

Q. Cohen was there when they got there. Now, there was considerable discussion that took place, wasn't there? A. That's right.

Q. And what was the discussion about? A. Well, I tried to tell you that whatever discussions there were, they were all foreign to me, because it was all figures and disputes and conversations.

Q. You say they were all foreign to you? A. That's right.

Q. I mean it was all in the English language, was it not? A. Yes, sir.

Q. And you understand that. A. I think I do.

Q. All right. And you say it was about figures. You are familiar with figures, are you not? A. Yes, some.

Q. Well, what is your occupation now? A. I am General Manager of Reinfeld.

(370) Q. And you have to do with accounts and figures and statements and all that stuff, do you not? A. That's right.

Q. Yes. And that's a very large business, isn't it? A. Yes.

Q. Doing how much business a year? A. Several million.

Mr. Tyne: That's objected to.

Q. Several million, all right. Now then, what were they talking about, figures? A. Well, they were talking

about discrepancies, some disputes or tax money and so forth, which was all foreign to me.

Q. And who was claiming the discrepancies? A. Mr. Goldstein and Mr.—well, Mr. Goldstein was trying to explain on behalf of Mr. Zwillman, and Mr. Zwillman, and so forth.

Q: Was Mr. Kessler there? A. Not in the morning.

Q. Now, in the morning did you hear Zwillman or Goldstein or Stacher or Rutkin say how much they thought was coming to them? A. There was a lot of figures thrown around there, which, again I must repeat, I didn't—I paid no attention to them.

(371) Q. You paid no attention to them. You were sitting in at the meeting. A. I was on the sideline.

Q. Well now, let's see. How were they seated down there? Was there a table? A. There was a large table.

Q. A large table. And they were seated around this table? A. I wasn't.

Q. But Zwillman was? A. Yes.

Q. And Stacher? A. Yes.

Q. Goldstein? A. Yes.

Q. Cohen? A. Yes.

Q. And Joe Reinfeld. A. That's right.

Q. That's all? A. That's right.

Q. And you were seated near the table? A. I was seated on a sort of a bench, up against the wall.

(372) Q. And had your brother-in-law, Joe Reinfeld, asked you to stay down there in the room? A. Well, he didn't ask me to. I thought I would be interested enough to be there myself.

Q. Because you would be interested in what they were talking about, you thought? A. That's right.

Q. And you were interested, were you not? A. A few points, yes.

Q. And do you mean to tell us now that you didn't know what they were talking about? A. No.

Q. You didn't know what they were talking about. A. It was the first time I had ever heard that conversation.

Q. Yes. That's the first time you heard it, but when you did hear it, I ask you this question: Did you hear Zwillman or Stacher or Goldstein, on behalf of Zwillman or Stacher, or Rutkin, say that they thought that they had claims for a million dollars? A. Rutkin didn't have anything to do with that, with those claims there at that time. He was just listening, the same as I was.

Q. Where was Rutkin sitting? A. He was sitting on the side lines, too.

(373) Q. And up until that time had you had any unfriendliness with Rutkin? A. No, sir.

Q. You were perfectly friendly with him up until that time? A. Well, we talked to each other when we met.

Q. I mean had anything happened between you and Rutkin to have a feeling of unfriendliness? A. Definitely not.

Q. No. So that while Rutkin was sitting on the side lines and you were sitting on the side lines, weren't you in conversation with one another? A. No.

Q. Was Rutkin sitting by himself? A. Well, I wouldn't say that. The room is not so large that they were segregated too much, you know; it is not too large a room. So—

Q. Well, how far away from the table was Rutkin? A. Maybe three or four feet.

Q. How far away from the table were you? A. About the same distance.

Q. And were you seated near each other or were you on one side and Rutkin on the other? A. No, he was several feet away from me.

(374) Q. And who was he sitting nearest to? A. I don't know.

Q. Wasn't he sitting near Zwillman and Stacher? A. I would say yes.

Q. Yes. Now then, how long did the conversation go on, the discussion take place, before this blow-up came? A. About an hour or so.

Q. About an hour. And then Rutkin got up, did he, and told Goldstein and Cohen to go out of the room? A. Yes.

Q. Now I think you said in your direct examination that he got up in a huff. Did you say that? A. Well, he just—I wouldn't say a huff—he just got up—

Q. Wait a minute. I don't want to misquote you. Did you say that?

The Court: He did.

Mr. Van Riper: All right.

Q. All right. Now, tell us what you meant by that, when you said he got up in a huff. A. He just got up. He looked as if he was mad.

Q. What did he say? A. You mean after Mr. Cohen and Mr. Goldstein went upstairs?

(375) Q. No, when he got up what did he say?

Mr. Tyne: Wait a minute, now. That's very misleading.

Mr. Van Riper: All right, I don't want to mislead the witness.

The Court: No, had he asked Cohen and Goldstein to go out, before he stood up??

The Witness: Yes.

Q. All right. Now, what did he say when he asked them to go out?

The Witness: He just asked them to be excused.

Q. Well now, just tell us what Rutkin said, and who did he address his remarks to, when he asked Cohen and Goldstein to go out? A. To Sam and George.

Q. Yes. A. He asked them to go upstairs for a few minutes.

Q. He said "You go upstairs for a few minutes"? A. That's right.

The Court: All right. Don't let's waste time.

Q. All right. Go ahead; then they went out? A. That's right.

Q. Then what happened? A. Then he got up and he directed his remarks to Joe (376) and he said something to the effect that if he doesn't get his money that he is claiming, that he will get it if he has to kill him and his whole family.

Q. Now then, up until that time, Mr. Holtz, had Rutkin said a single word in which he asked for any money? A. No.

Q. Not a single word. You shake your head, no, so the reporter can't get it. A. I said no.

Q. Yes. There had been no claim made by Rutkin for money that morning up until that time, had there? A. That's right.

Q. And the entire discussion about money had taken place between Reinfeld on one hand and Zwillman, Stacher and Goldstein on the other. A. That's right.

Q. Perhaps with Cohen on Reinfeld's side; is that correct? A. Yes.

Q. And there hadn't been a single word from Rutkin about money. A. That's right.

Q. And all of a sudden he jumped up and said, "Unless I get my money, I am going to kill you and your family," is (377) that right? A. That's right.

Q. What did Reinfeld say? A. Well, what could anyone say.

Q. That is not the question, Mr. Holtz. What did Reinfeld say? A. He didn't say anything.

Q. He didn't say anything. Did he say, "What money have you got coming, Jim?" A. If he said it, I didn't hear him say anything; but I just tell you, Mr. Van Riper, everybody was stunned at that, the effect of those remarks.

Q. What did Zwillman say? A. Nothing.

Q. What did Stacher say? A. Nothing.

Q. And you said nothing? A. Nobody said anything.

Q. Well, there must have been a time when somebody started to talk afterwards, wasn't there? A. Well, the whole thing sort of fell apart. I don't just recall—to have anyone direct a remark like that sort of stuns you.

Q. I take it from what you said that Rutkin stood up (378) right at the table where he had been sitting. A. Well, in the room, yes.

Q. Yes.

Mr. Tyne: I object to that. He didn't say he was sitting at the table.

Mr. Van Riper: All right.

Q. He stood up at the place where he had been sitting. A. Yes.

Q. Now did he subsequently sit down? A. I don't remember that.

Q. Well, this is very important, Mr. Holtz. A. Well, I didn't just observe everybody, whether anyone was sitting down or laying down or standing up; I wouldn't remember those things.

(379) Q. I am only asking about one man, Rutkin; you saw him stand up? A. He stood up when he made these remarks.

Q. And then did he sit down? A. Perhaps. I didn't observe him so close.

Q. Well, he said something afterwards somebody must have said something. A. There was some conversation after, it was sort of a shock to everybody—Cohen and Mr. Goldstein came back downstairs and then the meeting was over and they left.

Q. Now, how long were Goldstein and Cohen out of the room? A. Oh, maybe five or ten minutes.

Q. Did anyone call them back? A. I think they were called back, yes.

Q. Who called them back? A. I wouldn't remember that.

Q. Did Rutkin call them back? A. I don't think so.

Q. Do you recall whether you called them back or not? A. I wouldn't remember.

Q. When Goldstein and Cohen came back in the room, did Reinfeld say to Cohen and Goldstein, "Rutkin just threatened me"? A. No.

Q. Did you say it? (379a) A. No.

Q. Was there any further mention made of it? A. No.

Q. Did Reinfeld talk to Cohen after that about his claim? A. No.

Q. What was the conversation about when Goldstein and Cohen got back in the room? A. Just a lot lot of moping around and I guess the whole thing broke up.

Q. You say a lot of moping around; was it moping around about the same kind of conversation that had taken place earlier? A. No, there were huddles in different parts of the room of different people and the whole thing fell apart.

Q. The whole thing broke up and there were little groups formed? A. Yes.

Q. You have a bar there? A. Yes.

Q. And some of the people found their way over to the bar, did they not? A. I believe they did.

Q. And you bought them a drink? A. I didn't buy them a drink, I may have given them a drink.

Q. Well, that is in the vernacular. They didn't pay for it (380) anyway? A. No.

Q. Now, one of those who came to the bar was Rutkin? A. The whiskey was there and they helped themselves.

Q. One of those who came to the bar was Ruitkin, was it not? A. It may have been.

Q. And do you remember Rutkin and Reinfeld standing together at the bar? A. I don't remember that, no.

Q. Do you remember Reinfeld and Zwillman and Stacher being together in a little group? A. It could have been.

Q. Now, did you hear any further conversation there that morning about settlement? A. No.

Q. Now, then, did you tell anyone about this threat of Rutkin's? A. No, sir.

Q. Didn't you talk to anyone at all about it? A. No, sir.

Q. At that time you knew a lot of police officials in the City of Newark, didn't you? A. Not any more than anybody else.

Q. Well, you knew a lot of them?

Mr. Tyne: I object; whether he knew them would make (381) no difference.

Q. Did you tell any police officials about this threat? A. No.

Q. Did you tell anyone in authority any place anywhere? A. Never.

Q. About this threat of Rutkin's? A. No.

Q. Now, it broke up shortly and they went away, is that right? A. Yes, sir.

Q. And they came back when, an hour or so later? A. Several hours later.

Q. And Kessler was with them when they came back? A. Yes.

Q. And Rutkin was with them? A. Yes.

Q. You admitted them to your house? A. Yes, It was more of an appointment made that they will be back.

Q. You mean when they left they said, "We will be back at 3 o'clock or whatever the time"? A. Yes.

Q. When they came back, did you say, "Now, Jim, I don't want any more of that stuff"? A. No, sir.

(382) Q. Did you say to Zwillman and Stacher, "I don't want any more of that kind of business from Rutkin in my house"? A. I didn't have any more discussion outside of listening to what was taking place.

Q. But it was your house? A. Yes.

Q. You were friendly with Zwillman and Stacher at that time, were you not? A. Yes.

Q. And did you speak to them about quieting Rutkin down? A. No.

Q. You knew Mr. Kessler? A. Yes, sir.

Q. Did you speak to Kessler about Rutkin's conduct in the morning? A. No.

Q. Now, were you there in the afternoon? A. I was.

Q. And the same kind of discussion took place in the afternoon? A. It continued with Mr. Kessler partaking of it.

Q. About the same kind of stuff that they were talking about in the morning? A. Right.

Q. And Rutkin sitting there all afternoon? (383) A. Yes.

Q. Did Rutkin cause any trouble or disturbance in the afternoon? A. No.

Q. And what time did that meeting break up? A. Quite late in the evening—it could have been five or six o'clock.

Q. And they all went home? A. Well, they all left.

Q. All left there. Was there an understanding that they would come back tomorrow? A. I believe there was, yes.

Q. And did they come back on the morrow? A. Yes.

Q. Which was Sunday? A. Yes.

Q. Now, do you know about what time they came back on Sunday? A. It was late in the morning.

Q. Was Rutkin with them? A. Yes.

Q. And Zwillman and Stacher and Goldstein? A. Yes.

Q. Kessler? A. Yes.

Q. They all came together? (384) A. Yes.

Q. Did you make any objection to Rutkin coming into your house? A. No.

Q. Did you say anything to Rutkin on Sunday about his conduct on Saturday? A. No.

Q. Did you say anything to the others on Sunday about Rutkin's conduct on Saturday? A. No.

Q. And did he misbehave himself in any way on Sunday? A. No.

Q. Now, you were then at that time how old? A. Well, I am 51 now and as it happened in '42,—well, how old am I?

Q. You are not a woman. How old were you?

The Court: Well, Mr. Van Riper, I don't want to seem to be circumscribing you, but you have wasted an awful lot of time with this lad.

Mr. Van Riper: But, your Honor—

The Court: I know what you are trying to do, but it is a silly waste of time. Nine from 51 is 42. Now I had to waste a lot of time in bringing that out but I had to do it to show that I don't want—

Mr. Van Riper: I will save as much time as we can.

(385) Q. The next time you heard from Rutkin, you had a phone call from him? A. Yes.

Q. How long after? A. Three or four weeks after.

Q. And was Joe Reinfeld then sick in the hospital? A. He was.

Q. Rutkin said, "I understand Joe is sick in the hospital" or words to that effect. You said yes and he said I

am sorry. A. I don't remember what he said. He may have said that. I just don't recollect.

Q. And did he say "I hope nothing happens to Joe because if it does, his family is going to be responsible for that settlement"? A. Something to that effect.

Q. Now, did you know that a settlement had taken place that afternoon? A. Yes.

Q. And how did you know that it had taken place? A. Well, Mr. Reinfeld told me.

Q. He told you it had taken place and when did he tell you that, Saturday night or Sunday night—when I say "night," I mean late in the afternoon. A. Well, he told me he agreed to give Mr. Rutkin a certain amount of money on Saturday afternoon.

(386) Q. By "a certain amount of money." Did he tell you $250,000? A. Yes.

Q. And did he tell you he had agreed to pay Zwillman and Stacher $358,000? A. Well, it was understood that way, yes.

Q. Now, you subsequently delivered this money in Kessler's office, did you not? A. I did.

Q. It was the 11th of May—would that be about the right date as you recall it? A. It was in May of '43.

Q. And where did you get the money from? A. From Mr. Reinfeld and Mr. Cohen.

Q. Where did you get it? A. In a vault room at the bank downtown.

Q. Which bank? A. National Newark and Essex.

Q. It was all in currencey, was it not? A. All money, yes.

Q. In cash. And what did you carry it in? A. I did not carry it in any valises.

Q. Fine. What did you carry it in? A. Carried it in my pocket.

Q. Carried it in your pocket, $608,000? A. Yes, wrapped up in some paper.

(387) Q. I see. Then you took it over to Mr. Kessler's office and it was opened there? A. Yes.

Q. And were you there while it was distributed? A. No.

Q. You did not see it distributed? A. No.

Q. You did not see who got it? A. No, sir.

Q. Did you see the bills themselves? A. I did.

Q. Did you see them count it? A. Yes.

Q. What sized bills were they? A. All large denominations.

Q. What do you mean, large? A. Thousand dollar bills, $500 bill, $100 bills, $50 bills.

Q. None under fifty? A. Well, there could have been some 20's but most of it was large.

Q. You say you didn't see it delivered. What did you do after you got to Kessler's office? A. I turned the money over to Mr. Kessler, Mr. Stacher, Mr. Zwillman, and Mr. Pearse accompanied me with Mr. Popik, I left Mr. Popik and Mr. Pearse there, and I left.

(388) Q. Now, that was the first time Mr. Popik was in the picture as far as you had contact with him as far as this matter was concerned? A. To my knowledge, yes.

Q. You say you turned the money over to him—your turned it over to all of those gentlemen and put it in the hands of these gentlemen; did you put it on the table or did you not? A. I put it on the table and stood there while Mr. Popik and the rest of the folks counted the money, and I helped them count it.

Q. You helped them count it? A. Yes.

Q. That took some little time? A. It didn't take too long.

Q. About how long would you say? A. About a half hour.

Q. A half hour to count $608,000. And then when you finished it, it was piled up, I suppose, on the table and you left? A. I left; that's right.

Q. Now, who was in the room when it was being counted? A. Mr. Zwillman, Mr. Stacher, Mr. Kessler, Mr. Popik and I.

Q. And Rutkin? A. No, sir.

Q. Rutkin wasn't there? (389) A. Rutkin was not there in the room when I turned over that money.

Q. Did you see Rutkin there that day? A. I saw Mr. Rutkin in another room.

Q. What room was he in? A. He was in one of the side rooms; the door was open and I couldn't help seeing him.

Q. Was he there alone? A. I didn't notice who was in the room with him, only I saw him there.

Q. Did you have any conversation with him? A. No, sir.

Q. All right, sir, that's all.

Mr. Tyne: That's all.

The Court: Witness excused.

(Witness excused.)

The Court: All right, I think right now, ladies and gentlemen, we will recess until about ten minutes before two so that we will be able to—

Mr. Van Riper: I beg your pardon.

The Court: I told you before, when there are two people to be talking at once, I am the one to be talking; I mean only when it affects what we are all concerned with.

Mr. Van Riper: I will be glad to do that.

The Court: I say we will recess now until ten minutes (390) to two so that you will have a chance to start afresh with Mr. Reinfeld.

The jury will be excused first. Ten minutes before two.

(Noon Recess)

(391) AFTERNOON SESSION

JOSEPH H. REINFELD, recalled for further

Cross examination by Mr. Van Riper:

Q. Mr. Reinfeld, I find that I misused a name this morning and I want to correct it with you. I asked you, you recall, about going to the Cumberland Hotel and seeing Mr. Magyar, do you remember that? A. Yes.

Q. And then I asked you if Mr. Magyar was not the owner or the manager of the Cumberland Hotel and you said he was not. I find that I used the wrong name. The name I should have used was Mr. Mayers. Do you know a Mr. Mayers? A. Yes, sir.

Q. And was Mr. Mayers the owner or the manager of the Cumberland Hotel? A. I believe he was the manager.

Q. And did you see Mr. Mayers there on occasions when you were there at the hotel? A. Yes, sir.

Q. And does that help to refresh your memory now as to whether or not Rutkin was with you on those occasions? A. No, sir.

Q. You mean it doesn't help or you say he wasn't there? A. It doesn't help, I don't remember.

(392) Q. Now, I asked you this morning whether or not Chick Callahan was one of your partners. You said yes. You said he was. A. Yes.

Q. Now, in the bootlegging business? A. Yes.

Q. And does that go over into the Browne Vintners venture? A. I don't know what you mean, bootlegging.

The Court: What?

The Witness: Are you talking about the high seas business?

Q. No, I am talking about the business of selling liquor during prohibition? A. Yes, sir.

Q. Was Chick Callahan a partner of yours then? A. He was.

Q. And did he continue to be a partner in Browne Vintners? A. No, sir.

(393) Q. He got out? A. Yes, sir.

Q. I see. And when did he get out, do you know? A. I think it was in early '30.

Q. And I asked you this morning if you knew a Captain Bailey at Shark River? A. Yes, sir.

Q. And you said no. A. That's right.

Q. Now, then, I ask you if Chick Callahan ever drove you to Captain Bailey's house? A. No, sir, I don't remember that.

Mr. Van Riper: Mr. Callahan, will you stand up, please?

(Person addressed stood up.)

Q. Is that Chick Callahan? A. Yes.

Q. You recognize him as such? A. Yes.

Q. Now, isn't it a fact that Chick Callahan on an occasion met you and Rutkin at the dock some place, either at the Highlands or South Amboy, and took you in a car to Captain Bailey's house and that Captain Bailey went with you out to the docks when the liquor came in? A. I might have had Mr.—Mr. Rutkin might have been with (394) me, yes, Mr. Callahan might have been with me, but I don't remember anything about Mr. Bailey.

Q. Well, will you say that Callahan never drove you to Bailey's house? A. Not that I remember.

Q. Did you ever meet Captain Bailey, of the Coast Guard or some other Government service? A. I don't remember.

Q. On the dock, when liquor was coming in? A. No, sir.

Q. You did not? A. No, sir.

Q. Now, then, I think that we were talking just before the recess about the fact that you had been summoned to Mr. Kessler's office on Monday morning, after the Sunday meeting in Mr. Holtz' house; is that correct? A. Yes, sir.

Q. And you said that Mr. Stacher informed you about the meeting? A. To the best of my memory, yes.

Q. Well, anyhow, you got to Mr. Kessler's office, I take it? A. Yes, sir.

Q. And who was there, do you know? A. Mr. Rutkin and Mr. Stacher and Mr. Kessler.

(395) Q. Zwillman wasn't there? A. I don't think so, no.

Q. Popik with you? A. No, sir.

Q. Mr. Cohen go with you? A. Yes, sir.

Q. Now, is that everyone who was there at that time? A. Yes, that's—to the best of my memory, that's all there was.

Q. Now, then, what information were you given there? Were you informed of anything by Kessler? A. First I was informed by Doc Stacher.

Q. Yes? A. I should rather say, he asked me whether, if I go back in business, whether I will take him in as a partner and my answer was no.

(396) Q. All right. Then what happened next? A. Then I said—then Mr. Kessler said to me that the boys wanted more money, something to that effect.

Q. The boys wanted more money? A. Yes. So I said to him, "Well, may I go and get my own counsellor?" And he says, "By all means." And I walked out from there, and Mr. Cohen was sitting in the reception room and the two of us walked out and I told him just what happened, and we walked up to Dave Popik's office for the first time and I told Dave Popik the whole story.

Q. Don't tell us what you told him. A. I told him the whole story.

Q. Now, then, when Kessler said, "The boys want more money," there was present in the room you, Kessler, Stacher and Rutkin? A. Yes, sir.

Q. Is that right? Now, then, did Kessler tell you why they wanted more money? A. I didn't ask him and he didn't say anything to me.

Q. Now, isn't it a fact, Mr. Reinfeld, that Kessler said to you, "Joe, we have been going over the accounts and it looked to me like this is going to be a pretty large claim, that you have made, apparently, a lot of money from bulk whiskey sales and you have taken in a lot in dividends (397) and I think you better protect yourself with counsel"? A. No, sir.

Q. Kessler did not say that to you? A. No, sir.

Q. And isn't it a fact that at that time Kessler said what I just said he said and then further he said, "Mr. Popik is representing you but I am not so sure, in view of the size of this claim, that you would not want to get other counsel, and if you do I think you ought to do it"? A. No, sir.

Q. He did not say that? A. No, sir.

Q. Your memory is clear? A. Yes, sir.

Q. All right. And isn't it a fact that after that you got Mr. Popik and then you retained Mr. Frederick Pearse and Mr. Mehler to represent you? A. No, sir.

Q. I beg your pardon? A. No, sir.

Q. And you did employ Mr. Pearse and Mr. Mehler to represent you? A. Yes.

Q. (Continuing) In this negotiation? (398) A. Yes.

Q. When did they come in? A. After I told Mr. Popik my troubles, he told me he is going—

Q. Never mind what Popik told you. A. He said he is—

Q. Not what he said.

The Court: As a result of your conversation with Popik you got Pearse, and who was the other one?

Mr. Van Riper: Mr. Mehler.

The Witness: No, sir.

The Court: When was it that you got Pearse and Mehler?

The Witness: Mr. Popik got Pearse and Mehler.

Q. Well, he got them for you, didn't he, Mr. Reinfeld? A. That was probably a week or so later.

Q. Oh, yes, but eventually Mr. Pearse and Mr. Mehler came in the picture representing you. A. Yes.

Q. That's right. And Mr. Popik retained Mr. Pearse and Mr. Mehler with your consent and knowledge? A. Yes.

Q. (Continuing) Did he not? All right. Now, then, you had a conversation with Mr. Pearse and Mr. Mehler concerning this matter, did you not? (399) A. Yes.

Q. Several conversations? A. Not several, no.

Q. All right. Did you ever tell your lawyers, Mr. Pearse and Mr. Mehler that Rutkin had threatened you? A. I told Mr. Popik.

Q. Did you ever tell—

Mr. Van Riper: I move to strike it out, if your Honor please, as not being responsive.

The Court: Well, it is not damaging.

Mr. Van Riper: All right.

Q. Did you ever tell Mr. Pearse and Mr. Mehler? A. I don't think I did.

Q. You don't think you did. (Continuing) In any of the discussions—and how many times would you say that you had discussed this matter with Pearse and Mehler? A. I don't remember well, but I think I met Mr. Pearse

two or three times during that period; probably Mehler about the same, or maybe more.

Q. All right. And on those two or three times when you met them you discussed the claims which, as Mr. Kessler said, the boys had, did you not? A. Yes.

Q. All right. And you told—did you instruct Pearse and Mehler to resist those claims just as you had previously (400) resisted them? A. I did not.

Q. Now, let us see. I want to be sure you understand me now. Suppose I ask you this, first: What were the claims that the boys had that Kessler told about? A. The bulk whiskey and the reorganization.

Q. The reorganization, that claim had to do with this, did it not: That Zwillman said that at the start of the enterprise, that during the bootlegging days and at the start of Browne Vintners, he had a 50% and your group had 50% and now when it was sold he wound up with 16%; wasn't that his complaint? A. No, not exactly, but something similar to that.

Q. Substantially that is what it was? A. Because I didn't have 50%.

The Court: Well, how is this material to Rutkin's situation?

Mr. Van Riper: It is material to Rutkin's situation, if your Honor please, because I want to show thoroughly the conversations that took place in Kessler's office, and I wanted to show statements by this man.

The Court: You see, I don't care about a lot of these extraneous matters; I want to confine this as nearly as I can to the matter at issue.

Mr. Van Riper: Yes, sir.

(401) The Court: And I don't see how all these conversations about Zwillman—unless Rutkin had a part of Zwillman's interest—

Mr. Van Riper: No, but Rutkin and Zwillman and Stacher were all negotiating with Reinfeld at the same time, and what I want to show by these questions now, is, if your Honor please, what Reinfeld said after he had been summoned to Kessler's office, and he told there were extra claims, but Reinfeld has said that this money was stolen from him by the use of a gun, and we say that it was a claim, and I want to establish—

The Court: Well, confine it to Rutkin, then.

Mr. Van Riper: All right.

The Court: Zwillman might have a claim and Rutkin might not have a claim, or Stacher might have a claim and Zwillman not a claim.

Q. Now then, when you were discussing it with Pearse and Mehler, whose claims were you discussing? A. Zwillman's and Stacher's.

(402) Q. Had you settled Rutkin's claim with him? A. As far as I was concerned, he was settled.

Q. He was settled. That was the $250,000 settlement? A. Yes, sir.

Q. And you also had settled with Zwillman for $358,000, had you not? A. Yes.

Q. And did you inform Mr. Pearse and Mr. Mehler that Zwillman was settled for $358,000 and Rutkin's for $250,000? A. I believe I did.

Q. And at that time you did not tell them about any threats, Pearse or Mehler? A. No.

Q. Now, then, after Pearse and Mehler had been representing you for some time, did you have another meeting in Kessler's office? A. Yes. I had one meeting, yes.

Q. And at that meeting in Kessler's office, Mr. Kessler was present, was he not? A. I don't think he was there.

Q. You don't think Kessler was there? A. No.

Q. Well, who was there? A. Mr. Pearse was there.

Q. And who else? (403) A. If I remember correctly, I think Mr. Mehler was there; I am not sure, and Mr. Popik and Mr. Zwillman.

Q. Was Stacher there? A. I don't remember; I don't think he was.

Q. Rutkin there? A. No, sir.

Q. Now, this was a meeting in Kessler's office without Kessler being present you say? A. I believe he was in the other room and let us have—I think it was the library.

Q. All right, but didn't he at some time join your meeting? A. I don't remember; he probably walked in and walked out.

The Court: Did he take part in the discussion?

The Witness: No, sir.

Q. Now, was there ever a meeting after the first meeting when you met in Kessler's office with Kessler and Stacher and Rutkin, was there ever another meeting in Kessler's office with you at which Rutkin was present? A. No, I don't remember that.

Q. Are you sure of that? A. I am pretty sure.

Q. Well, Mr. Reinfeld, wasn't there another meeting in Kessler's office at which Zwillman and Stacher finally agreed to drop their extra claim? A. I am sorry, Rutkin was there.

(404) Q. Rutkin was there? A. That was the last meeting, Popik was there, Mr. Pearse was there, that was the last meeting.

Q. That was the last meeting. Now, then, just so that you have it on the record just the way you want it on, this last meeting you are talking about, is this the one you had in mind a minute ago when you said you didn't think Kessler was there? A. No, another meeting.

Q. Still a later meeting? A. Yes, a later meeting.

Q. So Kessler was there? A. That was to the last meeting.

Q. Kessler, Popik, right? A. Yes.

Q. Pearse? A. Yes.

Q. Mehler? A. No, I don't think he was there.

Q. Zwillman? A. Yes.

Q. Stacher? A. Yes.

Q. Rutkin? A. Yes.

(405) Q. Cohen? A. No.

Q. Are you sure about Cohen not being there? A. I don't think he was there.

Q. Goldstein? A. No.

Q. Neither one of the accountants? A. No.

Q. Now, at that meeting with Rutkin present, was there any considerable discussion about the merits of the claim for the bulk whiskey and the other claims? A. No, there wasn't very much discussion except I believe somebody spoke about the commitment I made.

Q. And speaking of the commitment that you made, didn't you say at some time there at that meeting "I will pay what I agreed to pay in the cellar and I won't pay any more"? A. I think I said something to that effect.

Q. Now, then, don't you recall, Mr. Reinfeld, at that meeting Mr. Mehler standing on his feet and talking at considerable length about these claims and pointing out why he contended that they should not be paid by you? A. I don't think Mehler was there. I might be confused, because he left for the Navy before this was settled; I might be wrong, but I am nearly sure that he left and went to the Navy just before it was settled.

(406) Q. Well, by "settled" do you mean the day it was paid or the day that you agreed to settle? A. The last day that they accepted—

Q. All right. A. —the commitment I made.

Q. All right. Well, anyhow, after a while at this meeting that you are talking about, Zwillman and Stacher agreed to take 358, didn't they? A. Well, I don't think—I think either Mr. Kessler, and I believe it was Mr. Kessler, said that they agreed to take—

Q. 250? A. —250 and 358.

Q. He said they agreed to take 250 and 358? A. I don't know whether it was the exact words but it was that they agreed to take it.

The Court: They agreed to take what?

The Witness: The 600 some odd thousand dollars.

The Court: Six hundred some odd thousand dollars?

The Witness: Yes.

Q. Which you had agreed to pay in the cellar? A. Yes, sir.

The Court: Did that include Rutkin—

The Witness: Yes, sir.

The Court: —250?

The Witness: Yes; 200—

(407) The Court: 250,000.

The Witness: For Rutkin, and 358 for Zwillman.

Q. And isn't it a fact that then Kessler said, "When do we get a check?" and you said "I prefer to pay it in cash"? A. There was no check mentioned.

Q. Kessler did not say that? A. No, sir.

Q. And isn't it a fact that after the announcement was made to the other side that they would accept this 608,000, that either Kessler or Zwillman or somebody said, "Now this is an awful lot of money. What about taxes? Are you sure the taxes are all paid?" or words to that effect? A. No, sir.

Q. And didn't you in answer to that say, "Yes, the taxes are all paid on it"? A. Nothing like that was mentioned.

Q. Nothing like that was said. And isn't it a fact that when that question was asked, Mr. Cohen said "I will prove to you that the taxes are all paid," and that he pulled a sheet out of his portfolio and laid it down on the desk and started to point out some figures? A. No, sir.

Q. You are sure that that didn't happen? A. Mr. Cohen wasn't there.

Q. Well, then, of course if he wasn't there it couldn't (408) have happened. Now then, after it was announced that they would accept this—and by the way, you say that this conversation did not take place about the taxes, did you have any conversation with Rutkin about taxes? A. I didn't see Rutkin after that.

Q. No, but when you did see him. A. No, sir.

Q. Did you have such a conversation? A. No, sir, they just walked out.

Q. You had no arrangement with Rutkin about evading any taxes on his part, did you? A. We didn't talk about that. I gave him that money and that's all.

Q. All right. Now, then, what was said about payment, after you had agreed again on the figures, what was said about payment? A. I don't know. Mr. Popik took that up and he told me to arrange for the money—

Q. No, excuse me. What was said right there, at the meeting? A. I don't remember anything was said, except the commitment I made.

Q. Well, it had to be paid, did it not, Mr. Reinfeld? A. Yes.

Q. Well, wasn't there anything said about "When do we get (409) the money" or "How are we going to get it?" or "What day"? A. I think there was, and Mr.—

Q. I beg your pardon? A. I think there was and Mr. Popik spoke up.

Q. Well, what did Mr. Popik say? A. He told them he is going to get it in a few days.

Q. Going to get it in a few days. Now, then, that meeting broke up, did it? A. Yes.

Q. And that is the last meeting that you had with those people as a group? A. Yes.

Q. Is that a fact? A. Yes.

Q. And you were not there when the money was paid? A. No, sir.

Q. You turned the money over, you told us, to Mr. Holtz? A. Yes.

Q. Now, then, I think that you told us this morning that the money which you turned over to Holtz that day was the $225,000 Cohen had previously given you? A. Yes.

Q. And had you had it in your vault all during the time since Cohen gave it to you? A. Yes.

(410) Q. Which was for a period of how many months, do you know? A. I couldn't say.

Q. Was it probably a year? A. It might have been.

Q. Having in mind that you paid it in 1943? A. I don't know. It might have been, but I don't think it was.

Q. Well, it was several months? A. Yes.

Q. Mr. Reinfeld, I call your attention to your testimony in New York, as we have previously referred to it—

Mr. Van Riper: On page 350, Mr. District Attorney.

Q. (Continuing)—which testimony was taken on June 30, 1949, and ask you if you were asked this question:

"At any rate, it was distributed before 1943," and you answered "Yes."

"Q. This 250,000 you paid to Mr. Rutkin, did you take that out of your bank account? A. No, sir.

"Q. Where did the money come from? A. I borrowed it from my son-in-law."

A. That's correct.

Q. Did you testify to that in New York? A. Yes.

Q. Under oath? (411) A. Yes.

Q. Was that the truth? A. That's the truth.

Q. It was the truth? A. Well, my son-in-law and I had a vault together and I probably should have said that I took the money from it, but I did say I borrowed it.

Q. Well, you have just told us here now that— A. Which meant borrowing in a way, because he was accountable for that money to the different holders, which was my family and others.

Q. But the fact was that the 225,000 that Cohen gave you had been put in a vault by you, had it not? A. Yes.

Q. And it was your money, was it not? A. Yes.

Q. You said that this morning; and that was the money that you used to pay off on this deal? A. Well, I wouldn't say exactly that money.

Q. Well, I asked you that this morning and you said you thought it was the same money. A. Well, I am sorry. There was more money than that in that vault and—

The Court: You mean not the same bills, is that what you mean?

(412) The Witness: Not the same.

The Court: But it was money that was in the vault there where you had put the 250,000 that you got from Cohen, that you took out again to pay over to—what's his name?

The Witness: Well, it was money in the vault, the money of Cohen and other monies.

The Court: You put the 250,000 in the vault with other money?

The Witness: Yes, sir.

The Court: And when you took it out, you just took the first 250,000?

The Witness: I didn't take it out.

The Court: Well, who did?

The Witness: I believe that—I don't remember exactly, but I might have asked my son-in-law, because he is the only one that could go to the vault, him and myself; and the reason I said that, I believe I must have asked him for it.

Q. You mean you must have asked him to go to the vault and get it? A. Yes.

Q. Get your money? A. There was other monies than my money, and that was in my mind again, so I said I borrowed it, because I asked him for it.

(413) Q. Well, are you now saying you borrowed the money? A. I don't say I borrowed it.

Q. No. A. I said that that must have been in my mind when I said at that hearing that I borrowed it from my son-in-law.

Q. I want to get your explanation on the record in fairness to you. I understand that what you say now is that when you testified under oath in New York that you borrowed the money from your son-in-law, what you had in mind was that you asked your son-in-law to go down to the vault and bring out your money? A. Yes.

Q. That's right. A. Which there was other monies there.

Q. I see. Now, then, when this money was prepared for delivery to—did you say you turned it over directly to Holzt or to Popik? A. I turned it over to Holtz.

Q. To Holtz. Was it marked, any particular package marked for Zwillman and Stacher, and any package marked for Rutkin? A. No, sir.

Q. There was just $608,000 all together? A. Yes.

Q. Is that right? A. That's right.

(414) Q. All right. Now, Mr. Reinfeld, at the times that Rutkin threatened you in New York, which you say

were on three occasions, you were engaged in a perfectly legitimate business, were you not? A. Yes, sir.

Q. And you knew, did you not, that to be threatened with a gun was an unlawful act? A. Yes, sir.

Q. And you knew, of course, that the carrying of a gun in New York particularly was a very serious crime? A. Yes, sir.

Q. Now, did you report to any police authorities the fact that you had been threatened by Rutkin? A. I did not.

Q. Did you report to any police authority the fact that Rutkin was carrying a gun? A. No, sir.

Q. Did you report to anyone else in New York that Rutkin was carrying a gun? A. No, sir.

Q. You knew when Rutkin threatened you, as you say he did, at Holtz' house in Newark, that that was a criminal act, did you not? A. Yes, sir.

Q. And you knew a lot of police officers in the City of (415) Newark, didn't you? A. Not a lot.

Q. Well, you knew the Director of Public Safety, didn't you? A. No, sir.

Q. You didn't. You knew police captains? A. Not at that time. I was away from Newark for a while then.

Q. You hadn't lived in Newark for some time? A. Well, not too long; about four or five years.

Q. Well, you had been away four or five years? A. Yes.

Q. But you knew where police stations were and you knew how to make a complaint. A. Yes.

The Court: Oh, certainly he knew where there were police stations; certainly he knew lots of cops around. We all do.

Q. And you didn't make any complaint? A. No.

Q. To anyone about it? A. No, sir.

Q. Now, at the time that Rutkin is supposed to have threatened you in Holtz' house, were you carrying a gun? A. No, sir.

Q. Did you have a gun at that time? (416) A. I did.

Q. You did have a gun? A. Yes, sir.

Q. Whereabouts? A. I believe I did. I had a permit for one.

Q. Yes. Where did you have the gun? A. I had it in Jersey.

Q. Whereabouts? A. My house.

Q. Where is your house in Jersey? A. 63 Vassar Avenue.

Mr. Van Riper: Will you mark this for identification?

The Clerk: This exhibit is marked D-6 for identification.

(Marked Exhibit D-6 for Identification.)

Mr. Van Riper: That one also?

The Clerk: This one is marked D-7 for identification.

(Marked Exhibit D-7 for Identification.)

Q. Were you living in Vassar Avenue, Newark, at that time? A. Well, I lived in New York, but I kept the house. We used to come out weekends.

Q. You came out from New York to Vassar Avenue weekends? A. I lived in New York but came out weekends to Vassar (417) Avenue.

Q. Now, I show you a photostatic copy marked D-7 for identification. It is entitled "Application for renewal of revolver permit"—

Mr. Tyne: Now I object to this line of questions, sir. He has already testified that he had a permit. What value does this have on the issues of this case? I think it is very remote.

The Court: What is the purpose?

Mr. Van Riper: If the Court please, the value of it is that I want to contradict the witness on what he has just said about this residence.

The Court: Oh, go ahead.

Q. (Continuing)—entitled "Application for renweal of revolver permit," dated December 1, 1942, and ask you if that is a photostatic copy of your signature? A. Yes, sir.

Q. And it shows your address to be 24 Wilbur Avenue, Newark, does it not? A. That's a mistake. Mine was 65 Vassar—63 Vassar Avenue.

Q. Is this your signature below here, to the affidavit? A. Yes, sir.

Q. And you swore at that time that your address was 24 Wilbur Avenue, did you not? A. I couldn't because there is a mistake somewheres.

(418) Q. Well, you signed it, did you not? A. I don't live on Wilbur Avenue. My brother-in-law lives on Wilbur Avenue.

Q. Yes. A. My brother-in-law lives at 24 Wilbur Avenue. I built the house at 65 Vassar Avenue in 1924.

Q. Your getting of the permit had nothing to do with Rutkin's threats to you, did it? A. No, sir.

Q. Now, Mr. Reinfeld, when this money was paid in Kessler's office, Stacher, Zwillman and Rutkin signed a release to you, did they not? A. I wasn't there.

Q. No, but you afterwards saw the release, did you not? A. Yes, sir.

Q. Do you have it with you, the original? A. I haven't.

Mr. Van Riper: May I ask the District Attorney if he has it? May I have it? I have a photostatic copy, if you would rather I use it.

The Court: Do you object to the use of a photostatic copy?

Mr. Tyne: I don't object to it, no, sir.

The Court: All right.

Mr. Van Riper: It is pretty dirty.

(419) Would you be good enough to mark it, please?

The Clerk: This exhibit is marked D-8 for identification.

(Marked Exhibit D-8 for Identification.)

Mr. Tyne: I might say this is from the file of Mr. Reinfeld's New York attorney. I have to return it to him. If Counsel wants to use a photostatic copy, I will accept it.

The Court: If you don't object to the use of a photostatic copy, that will save the whole situation.

Mr. Van Riper: That's right.

The Court: Is this the one?

Mr. Van Riper: Yes, sir (handing to Court).

Q. Mr. Reinfeld, I show you Exhibit D-8 for identification, purporting to be a photostatic copy of a release, dated May 11, 1943, and signed by Abner Zwillman, Joseph Stacher and James Rutkin. Was that release delieverd to you? A. It was, yes.

(420) Q. And the witness' signatures on there are Mr. Pearse, Mr. Kessler and Mr. Popik, are they not? A. Yes, sir.

Q. Now, Mr. Reinfeld, I notice that this release mentions you, your brother Samuel, your brother Sol, Louis Holtz, Isidore Holtz—who is that? A. My brother-in-law.

Q. Another brother-in-law? A. Yes.

Q. Harold C. Levin? A. Yes.

Q. A son-in-law? A. Yes.

Q. Browne Vintners? A. Yes.

Q. And Cointreau Limited, who is Cointreau Limited? A. Companies I organized in '41 or '42.

Q. And were these other people, that is Zwillman and Stacher and Browne Vintners in the Cointreau business? A. No, sir.

Q. They were not? A. No.

Q. Didn't have any interest in it? A. No.

Q. Why did this release also release the Cointreau Company? (421) A. Well, Cointreau used to be in Browne Vintners, one of the agents.

Q. You mean Browne Vintners was an agent of Cointreau? A. Yes, and when it was sold it was sold when France was invaded and one of the Cointreau family came to me and he wouldn't go with Seagrams, because the company belonged to Seagrams at that time. There was no agreement between Cointreau and Browne Vintners and therefore he asked me if I would finance him.

Q. Who asked you? A. Mr. Cointreau, would I finance them, he was going to look around and get a building some place and build a distillery to distill cointreau and when Mr. Zwillman demanded a little extra money, he made claim for that, he should have been a partner in Cointreau.

(422) Q. So that was one of the claims that was made? A. Yes, sir.

Q. It had to do with the Cointreau Company? A. That is what he claimed. I said, "Well, the Browne Vintners Company was sold, forgotten, and this is something that I started." So when Popik and Kessler arranged this release they took in everything that was claimed at that time.

Q. Now, do you know a man by the name of Hans Pomeranz? A. I do.

Q. I beg your pardon? A. I do.

Q. He is a cousin of yours? A. Well, probably a second cousin or so.

Q. Where does he live? A. Right now?

Q. No, where did he live prior to the settlement in '43? A. He used to live in Germany.

Q. When you were abroad with Rutkin did you and Rutkin visit Mr. Pomeranz? A. Not at his home, no.

Q. Well, did you visit him at some place? A. I think we met some place, yes.

Q. And did you make arrangements with him to send home alcoholic beverages, or some pure alcohol to this country? (423) A. No, sir.

Q. You did not? A. No, sir.

Q. Did you and Rutkin discuss business with Mr. Pomeranz when you met him over there? A. Mr. Pomeranz was in a dry goods business but he told us where we could buy wine and things like that, and there was a little talk about it.

Q. All right. Now, Mr. Reinfeld, do you recall the time that you increased the capital stock of Browne Vintners to a million dollars? A. I don't recall that, no.

Q. Well, wasn't there a time when the capital stock was increased to one million dollars? A. It was, yes.

Q. Now, at the start there was 250,000 sent to Canada to Bowers, is that right? A. Yes, sir.

Q. And then right after this there was some more money put in by way of loans, the company made some loans, didn't it? A. Yes.

Q. (Continuing) From some of the members? A. Yes.

Q. Instead of the members buying stock they made loans to (424) the company? A. Yes, sir.

Q. And that was because you didn't want the stock to show up at that time? A. I wouldn't say that; I don't know what was the reason.

Q. All right. A. (Continuing) But we took our time to issue the stock.

Q. Anyhow, it finally got to a point where your capital was nearly a half million dollars, isn't that so? A. Yes.

Q. $469,000 to be exact? A. At different times it was different amounts.

Q. Yes, but there got to be a time— A. I don't know what you are speaking about.

Q. There got to be a time when your capital stock was about $469,000? A. Well, I don't remember $460,000, but it was four, and it was five, it was six, it was all kinds of amounts for different periods.

Q. Now, then, there came a time when you took formal action in the company to raise your capital stock to a million dollars, isn't that right? When I say formal action, you agreed to issue new stock? A. It wasn't formal action, the stockholders put in more (425) and—

Q. Yes. A. —they issued a million dollars worth of stock.

Q. It was agreed by the stockholders and the directors, I suppose, that the stock should be increased to a million dollars, right? A. Yes.

Q. Now, then, at that time did you, personally, put in any more money? A. Well, I put in from 1934 to '35, I think it was about $185,000 or $200,000.

Q. Well, do you know, Mr. Reinfeld, about what date it was, what year it was in which you raised the stock capitalization to a million? A. No, sir.

Q. Would you think— A. (Continuing) I would guess probably around thirty-five or six, something like that.

Q. Thirty-five or six, all right. Now, then, before the capital stock was raised to a million what percentage of Browne Vintners Company did you have? A. I couldn't say. I said before that I had about a $200,000 investment at that time.

Q. You had about a $200,000 investment before the stock was raised to a million? (426) A. Yes. When the stock was raised to a million, it was just stock raises, the money wasn't in.

Q. The money wasn't in? A. No.

Q. Well, didn't you put in more money to make a million dollars capital? A. We put in to make it two million, over two million. That is the reorganization we are talking about?

Q. No, it is not, Mr. Reinfeld, that is a later one, that will be a later one. I am now talking about the first one that raised it to a million. A. To the best I can remember, when we raised the stock to a million there was about $700,000 in the company.

Q. Let's put it this way: When you finally got a million dollars in the company, what percentage of it did you own? A. I couldn't tell you offhand but—

Q. Can you give me a pretty good idea? A. I say I had about $200,000 there.

Q. All right. What percentage of it did Zwillman and Stacher own when the capital stock was up to a million dollars? A. I don't remember, but I would say about—I don't know whether they had 300,000 or 200,000, I don't remember.

Q. Well, did Davis own some of the stock then? A. Yes.

(427) Q. And did Maurie Lehroff own some of the stock then? A. Very little, I remember there was a couple of thousand dollars.

Q. A little, but some? A. Some, yes.

Q. That's right. Now, isn't it a fact that Zwillman's stock and Davis' stock and Lehroff's stock equaled your stock? A. Equaled me? You mean the rest of the stockholders' stock?

Q. Yes, in your group. A. I couldn't say yes or no, I don't remember.

Q. It might be possible that that was so? A. It could be, yes.

Q. And included in your group at that time was the Kanengiser group? A. That was my group.

Q. Well, it was included in your group, was it not? A. No, sir.

Q. It was not. Now, at the time that the stock was raised to a million dollar capitalization, that is, as you just said a minute ago, the various stockholders put in some new cash? A. That's right, yes.

Q. That's right. Now, did you receive any of that cash (428) from any of the other partners? A. Well, Mr. Cohen was our accountant, a director and the financial adviser, and he handled all the money. I knew—he came and told me that so and so put up $50,000 or 20,000, I knew at the time.

Q. Yes, but my question was did you, personally— A. (Continuing) But I don't remember now.

Q. Did you personally receive any money from any of the partners for the purpose of increasing their share in the capital stock of Browne Vintners? A. Personally, no.

Q. You are sure about that? A. I am sure, yes.

Q. Now, at that time Mr. Facher was a stockholder, was he not? A. Yes, sir.

Q. And do you recall how much Mr. Facher had to put up to maintain his percentage in the new capitalization set-up? A. Well, I don't think Facher was going any further than $20,000. He declared himself.

Q. All right. A. (Continuing) When he put up that amount.

Q. Facher did reach a point where he had $20,000 invested, did he not? A. Yes, sir.

(429) Q. And at the time that the capitalization was raised from $500,000 to a million didn't Facher have to put in some money to get his share of the $20,000? A. Facher had about, I would say, $10,000 or $12,000 from the $25,000 and then he put in an additional amount to make it $20,000.

Q. Well, did he put in that additional all at once? A. I couldn't say.

Q. But isn't— A. I don't think he did, but I don't remember.

Q. You don't think he did. And isn't it a fact that the final payment had to be made by Facher to move his share up to $20,000, which amounted to about $12,000 and that he gave that money to you personally? A. He could have.

Q. And wasn't Mr. Kanengiser in exactly the same situation? A. Yes, sir.

Q. And he had to put up some money. A. Yes.

Q. And isn't it a fact that at the final showdown he put up about $1200 and gave it to you personally? A. I don't remember, he might have.

Q. He might have done it. Now then Sam Lentz put up some money at that time? A. Well, Sam Lentz continued putting up money.

(430) Q. But I mean he had to put up some cash to get his share up, didn't he? A. Yes.

The Court: Mr. Van Riper, I may be extraordinarily dull-witted about this thing but I don't see what all this had to do with the matter at issue.

Mr. Van Riper: Your Honor, this is going to lead directly to the question of putting up money by Rutkin. If your Honor please, I think I have the privilege of examining this witness as to some of the other facts before I disclose to him—

The Court: You have examined and examined and examined on the same theory and I think you have wasted a lot of time. I wish you would reduce it to a minimum.

Mr. Van Riper: I don't like to have your Honor think we are wasting time—

The Court: I may be wrong about that, but I do feel we have wasted a lot of time. If you will get down to—I don't care about $1200 paid by Joe Doakes or whatever his name was. What we are trying to get at is what was Rutkin's position.

Mr. Van Riper: In fairness to myself I must make myself clear on this—it is important to show what became of Facher's $1200 because the record will show that contribution by Facher and by Kanengiser, and therefore it (431) is important for us to see the accuracy of those records but I will get to Rutkin on it.

The Court: All right.

Q. Now, isn't it a fact that at the time the capital was raised from 500,000 to a million that Rutkin had to put up about $30,000 in order to keep his 6%? A. When Rutkin was paid out the first time when he made the claim, which was in '36 I think the company was worth about $700,000; he didn't put up anything because our capital was raised, I think, before that.

Q. All right. Now I want you to make sure of that. You have my question. A. Well, you have the paper and I haven't and I don't know but I am saying that approximately the stock, or I think the capitalization of a million dollars was somewheres in '35—no, early in '36, and Mr. Rutkin didn't put up any money.

The Court: Well, did he have a share in it at that time?

The Witness: He claims he had a share till I paid him out.

The Court: Well, did he have a share?

The Witness: He did not.

The Court: Is that the time when you say he had overdrawn all of his rights by $35,000 and owned nothing (432) in it?

The Witness: Yes.

The Court: Now did he have any stock in the new company before it was raised to a million dollars capitalization?

The Witness: No.

The Court: Or did he only have the $250,000?

The Witness: No.

Q. Now, isn't it a fact that at the time that the capitalization was raised to a million dollars Rutkin had 28,000 in in round figures and contributed thirty-one thousand more to make his share sixty thousand? A. Not that I know of.

Q. You don't know.

Mr. Van Riper: May I have this marked for identification, please?

The Clerk: Marked D-9 for identification.

Q. I show you a photostatic copy of a typewritten statement with some writing in ink on the side of it, longhand writing. I ask you if you recognize that longhand writing?

Mr. Tyne: Well, of course I object to the witness being shown a photostatic copy of any papers and asked if he recognizes any writing.

Mr. Van Riper: Show him the original. It is (433) partly torn and I don't want to use it.

The Court: Show him the original.

The Witness: I don't know whose writing it is.

The Court: Speak up. I don't know whose writing—

The Witness: I don't know whose writing it is.

Q. Are you familiar with Mr. Kanengiser's writing? A. No, sir.

Q. Now, I will ask you if you will take a minute to look at that statement, Mr. Reinfeld. I don't want to start asking you questions about it until I have given you an opportunity to see it. A. I don't remember this statement.

Q. You don't remember this statement? A. It is a long time.

Q. Now that longhandwriting has the following notation, doesn't it—"J. R."

Mr. Tyne: Now, I object to reading anything in the record.

Mr. Van Riper: All right, if you don't want it in, all right, we will put it in later if you don't want it in now.

Q. Isn't it a fact, Mr. Reinfeld, that Mr. Rutkin came to you with this paper which has just been marked D-9 for identification, the paper that I have just shown you, (434) with this longhandwriting on the side of it and said to you, "Joe, I have just been talking to Mr. Kanengiser and he doesn't understand what happened to 2% of his stock, 1½% of which he got from Callahan and a half percent of it afterward" and you said, "Kanengiser and I have enough stock, we will take care of that." A. I don't remember.

Mr. Tyne: What is your answer so that it will get on the record.

The Witness: I don't remember.

Q. Now then, sir, isn't it a fact that at the meeting in Holtz' house just before you settled with Rutkin for $250,000, that you had a little private talk with Rutkin over around the bar? A. No, sir.

Q. And isn't it a fact that at the bar or some other place in Holtz' house you said, "Jim, now I hope you are

satisfied" and he said "What do you mean?" And you said, "You have cost me $350,000 here this morning." A. No.

Q. And didn't he say to you then, "Joe, when are you going to stop stealing from your partners?" A. No, sir.

Q. And didn't you say to him, "Jim, you know that you are going to get every dollar that is coming to you"? (435) A. No, sir.

Q. And didn't he pull a paper out of his pocket and say, "How am I going to get every dollar that is coming to me with this kind of a statement that you give to me" and didn't he show you on that paper, "Look here, you are charging me $30,000 for taxes the same way you tried to charge Abe $245,000?" A. No, sir.

Q. And didn't you say "Well, I gave it off to Abe, I will give it off to you?" A. No, sir.

Q. And didn't he say, "According to this statement I have $81,000 coming and you know that that's not enough?" A. No, sir.

Q. And didn't he say to you, "You always said Joe that I had as much coming as your brothers had." A. No, sir.

Q. And didn't he say to you, "What about my $60,000 investment?" And didn't you say to him, "Jim, I forgot to tell Cohen that you paid it back?" A. No, sir.

Q. But you did settle with him after for $250,000? A. Yes.

Q. Now, Mr. Reinfeld, one more question. You said that this money was paid to Rutkin in 1943, was it not? (436) A. Yes.

Q. Then in 1948 Rutkin started suit against you in New York, didn't he? A. Yes.

Q. And that suit is still pending? A. Yes.

Q. It has never been tried? A. Yes—no.

Q. It has never been tried, and you have resisted it in New York, naturally. A. Yes. Well, I have hired an attorney.

Q. Your attorneys in New York are representing you and fighting that claim in New York, right? A. I don't understand that.

Q. Well, you are opposing his claim in New York? A. Yes.

Q. It is a claim for twenty two million? A. Yes.

Q. Against you and Bronfman? A. Yes.

Q. And the Bronfmans are the people who own Seagrams, are they? A. Yes.

Q. Now, isn't it a fact that the first time you ever told this story about Rutkin threatening you was when you were (437) giving testimony in New York in the case between Rutkin and yourself? A. I told the story to my family a long time ago, Mr. Popik and other people.

Q. You told it to your family? A. Yes.

Q. When did you tell it to your family? A. Before 1948.

Q. You never told it to any other— A. I told it to my family just before the meeting took place in the cellar.

Q. You had told them about it? A. Yes, sir.

Q. And you told them that their lives were in danger? A. Yes, sir.

Q. And did you think that their lives were in danger? A. I thought so, yes.

Q. Did you do anything to protect their lives? A. I paid off.

Q. You thought that would protect them from a gunning man? A. I hoped so.

Q. Now, the first time you ever told it outside that was when you were giving testimony in New York in the suit of Rutkin against you? A. The first time I was there, yes.

I didn't say it, (438) his attorney questioned me on it.

Q. That's right. He asked you, his attorney asked you if Rutkin didn't receive $250,000 from you, didn't he? A. No, he looked at the general release which read $1. And he said "How much money did you give him" I said, "$250,000."

Q. Well, by the way, do you know why that release reads one dollar? A. I don't know. They tell me it is the procedure.

Q. I see the release was prepared by Mr. Popik, your attorney, was it not? A. I couldn't tell you.

Q. Well, didn't Mr. Popik discuss it with you? A. Hardly except—

(An exhibit is marked Exhibit D-10 for identification.)

Q. I show you D-10 for identification on the letterhead of David Popik addressed to Samuel I. Kessler and dated May 10, 1943 and ask you if that signature "Dave" is Mr. Popik's? A. Yes.

Q. You are familiar with Dave Popik's signature? A. Yes.

Q. Now, when I said—just so that the jury will not become confused, Mr. Reinfeld—you and I know what we were talking about—when you were testifying in New York that was not at the trial of the case, that was testimony before trial, (439) wasn't it? A. Yes.

Q. Didn't you pay Rutkin in 1943 in accordance with the agreement which you made with him and since you received a release from him has Rutkin ever in any way threatened you? A. No, sir.

Q. Has he ever in any way asked you for any more money? A. No, sir.

Joseph H. Reinfeld—for Government—Recalled—Redirect

Q. Has he in any way made any demand upon you except that which he made in this suit in New York? A. Are you talking about this suit or after?

Q. No, except in the suit.

The Court: You mean after the institution of the suit in New York?

Mr. Van Riper: No, after the release.

The Court: After this release?

Mr. Van Riper: Yes.

The Court: After the payment of the $250,000 were there any further threats of any kind?

The Witness: I didn't see Mr. Rutkin only once from '42 until the case started in New York.

Q. The answer is he never made any demands except in the lawsuit, is that right?

Mr. Tyne: Well, that's a demand.

(440) The Court: He said except in the lawsuit.

Q. That's so, isn't it Mr. Reinfeld? A. Yes.

Mr. Van Riper: That's all.

Redirect examination by Mr. Tyne:

Q. Wasn't there any question, Mr. Reinfeld, between the payment of $250,000 made to Rutkin and the settlement of $358,000 that you made with Zwillman? A. None.

Q. When you referred to the words "settlement of Mr. Rutkin's claim" what did you mean by settlement? A. Well, I meant by settlement that he demanded the money and as I said before he threatened me a few times and I decided to give him the money; I didn't want any trouble or publicity and I was afraid to get hurt and probably my family.

Q. Why was the money paid over in Mr. Kessler's office at the time this $358,000 was paid to Zwillman? A. Well, it seems from the first time they all came in, Zwillman, Rutkin and them. I promised him this money and then it started again that Zwillman wasn't satisfied and then Popik got into it and then I got sick and went to the hospital. I went away to Hot Springs, I was away a couple of months and when I came back the thing was about to (441) be settled. What I mean, "settled" they would accept the money.

Q. And then did you select that time to pay over to Rutkin the $250,000? A. That I promised him a couple of months before that in that meeting.

Q. Now, did you ever say to Rutkin at any time that "Kanengiser has enough stock, don't give him any more. We will take it" or words to that effect? A. No, sir.

The Court: Now, wait a minute. Is this something he has already denied? Don't repeat.

Mr. Tyne: No, I am not, sir. He said he don't remember. Now, I am putting it to him specifically.

Q. Now, did you ever have any discussion with Rutkin with relation to an alleged $35,000 in tax with which he was being charged? A. No, sir.

The Court: He has already said he hadn't.

Q. You have testified—I think you testified yesterday that the stock was fronted for a number of persons, you didn't know for whom each person was fronting, is that right, to hold the stock as nominee? A. I didn't get that.

Q. I think you testified yesterday that the stock was being (442) fronted, certain stock was being fronted by certain persons but you didn't know the persons for whom the stock was being fronted, is that right? A. Yes.

Colloquy of Court and Counsel

Q. Do you know or could you tell the number of persons or identify the persons for whom this stock was being fronted. A. I couldn't.

Q. Was one of them Rutkin? A. Rutkin?

Q. Was anybody fronting any stock for Rutkin? A. No, sir.

Q. Would this paper fresh your recollection as to the total amount of the fronted stock?

Mr. Van Riper: Excuse me now, may the record show what paper it is?

Mr. Tyne: Well, I will have it marked for identification.

The Court: Show it to Mr. Van Riper, he may agree on it.

Mr. Tyne: Should I have it marked for identification?

Mr. Van Riper: Yes, mark it for identification.

The Clerk: Marked G-2 for identification.

Mr. Van Riper: Well now, if the Court please, I (443) object to the witness being shown a paper, the origin of which we know nothing about, and asking him to refresh his memory without the witness testifying he had ever seen the paper.

The Court: Yes, we must know what it is, whether he made it.

Mr. Tyne: Under the case of the United States vs. Riccardi. It doesn't make any difference who prepared the paper, if a witness is shown a paper and he is asked if it refreshes his recollection, he can use it to refresh his recollection.

The Court: No, I don't think so. There must be something germane to the case.

Mr. Tyne: I submit that that is what the Riccardi case holds.

The Court: I understand. I have ruled.

Q. Will you look at this paper?

Mr. Van Riper: Now, if the Court please—

The Court: Is this the same paper?

Mr. Tyne: Yes.

The Court: Now, have you ever seen that paper before?

The Witness: I think I did.

The Court: Where?

The Witness: I don't remember, I think it looks (444) something like it was made out by Cohen.

The Court: Can you prove it? by some other way? I am not going to allow that to be used.

Q. Can you tell us who prepared this paper? A. I think it was prepared by Cohen, the accountant.

Q. Sam Cohen, the accountant? A. Yes.

Q. Do you know from what information it was prepared?

The Court: Don't bother with it any further. I am not going to allow it to be used, too remotely removed from this case.

Q. How much of the stock was beneficially held?

The Court: Well, I think we have been through this whole situation of the stock that was fronted for and the main question is this: Was any of this stock for which there was a front held for Rutkin?

The Witness: No, sir.

The Court: Any stock of any kind?

The Witness: No, sir.

The Court: None of it was held either directly or indirectly for Rutkin?

The Witness: Not that I know.

(445) Q. Well, did you have knowledge of all of the persons who held stock, actually, or as nominees?

Mr. Van Riper: If the Court please, I don't want to interfere with Mr. Tyne's examination, but this question is so unfair because the witness at least three times has said in answer to my questions that he didn't know for whom it was from?

The Court: He said that he knew all of the money was put up and by whom it was put up.

Did you know that?

The Witness: Yes, at that time, yes.

The Court: Do you know whether or not Rutkin put any money up?

The Witness: No, sir, I don't.

The Court: You don't know it?

The Witness: He never put any up.

The Court: You know that he never put any up?

The Witness: I never seen any.

The Court: All right.

Q. When you were down in Florida, you visited the Dempsey-Vanderbilt Hotel, did you? A. Yes.

Q. And that was the hotel that Rutkin got interested in after he got the $60,000 from you? A. Yes.

(446) Q. Do you know what whiskey that hotel was featuring and pushing at that time? A. Well, Jack Dempsey was very friendly to me, he was, as far as Scotch whiskey, he featured White Horse; as far as we had Wilson, he didn't feature that, he featured the Dempsey whiskey, which Mr. Rutkin was representing with Mr. Jack Dempsey for McKesson-Robbins.

Q. Do I understand that Rutkin and Dempsey were representing McKesson-Robbins in a sale of McKesson-Robbins whiskey? A. Dempsey whiskey.

Q. Dempsey whiskey was the brand name? A. Yes.

Q. And was the sale of that whiskey in direct competition with whiskey sold by Browne Vintners? A. Well, we

were just going into the domestic whiskey; yes, it was a similar whiskey to Wilson.

Q. Similar whiskey to Wilson? A. Yes. But it was his own whiskey and he was using it.

Q. Now, during—strike that out. Up to 1938 I understood you to say that the company was in financial difficulty? A. Up until when?

Q. 1938, Browne Vintners was in financial difficulty? A. Yes.

Q. And did you negotiate a loan about that time for Browne (447) Vintners? A. Yes, we did.

Q. In what amount? A. Well, the big amount was later on. We owed the bank probably two or three million dollars; but we negotiated a bank loan for five million dollars for a longer period of time, which was granted, I think, around '39.

Q. '39? A. Yes.

Q. And you say at that time the company, Browne Vintners, was in good financial condition, is that so? A. From the time that that loan was granted, yes.

Q. Yes. Now, Mr. Van Riper showed you an assignment, did he not, or I think he referred to it as a release, which was marked D-5 for identification. I ask you to examine that and tell us whose signature appears on that paper. A. Mr. Rutkin's and Mr. Cohen's.

Q. I notice that it is signed "A. Rutkin." Who is A. Rutkin?

Mr. Van Riper: If your Honor please, we have admitted the signature on it the other day.

Mr. Tyne: Well, I want to know who is A. Rutkin. Is that Abe Rutkin?

Mr. Van Riper: It is the defendant on trial here, his signature.

Mr. Tyne: All right.

(448) Q. He signed it in your presence? A. Yes, sir.

Q. Did he read it over? A. Yes, sir.

Q. Did he say anything before it was signed or before the time it was signed by him? A. No, he was happy he was going into business, and I gave him the money a day or two later, I think.

Q. What did he say, if anything? A. Well, he appreciated that I gave him this money and he was going to go in business, that is about all. I don't remember exactly; there might have been a few other words.

Q. Now, at this time did he say—

Mr. Tyne: I would like to offer this in evidence at this time as a Government exhibit.

The Court: All right.

Mr. Tyne: That is D-5 for identification.

The Clerk: D-5 is now Government's Exhibit 3 in evidence.

(Received and marked Government's Exhibit 3 in evidence.)

Q. When he delivered this instrument to you, G-3 in evidence, did he say to you that he was delivering this paper to you as security? A. No, sir, he was paid out in full according to what (449) claims he was making, and I decided to recognize the claims and pay him out in full.

Q. Pay him out in full? A. Yes.

Q. Now, at that time what was the company's financial condition? A. About $700,000.

Q. $700,000? A. Yes.

Q. And he referred to a 6-percent interest at that time, did he? A. Yes.

Q. And $60,000 would be a little more than 6 percent of $700,000, wouldn't it? A. I didn't get that.

Q. I say $60,000 referred to in this paper would be a little more than 6 percent of $700,000? A. Yes.

Exhibit G-3, Read into Record

Mr. Tyne: If your Honor please, I would like to read this paper to the jury.

The Court: No, don't read it now, save it for later.

Mr. Tyne: I think it is very important, sir, at this time.

The Court: Save it for later, will you? You will (450) only have to read it again and the jury is not going to have it in mind—all right, go ahead, read it.

Mr. Tyne: Thank you very much.

I am reading from G-3 in evidence:

"KNOW ALL MEN BY THESE PRESENTS, that I, James Rutkin, residing in the City of Newark, County of Essex, State of New Jersey, in consideration of the sum of $60,000, receipt whereof is hereby acknowledged, do hereby sell, assign, transfer and set over unto JOSEPH H. REINFELD of the City of Newark, County of Essex, State of New Jersey, all my right, title and interest in and to six percent of the issued and outstanding shares of capital stock, preferred and common, as at October 1, 1936, of BROWNE VINTNERS CO. INC., a New York corporation, which represents any and all of such shares of capital stock in the said BROWNE VINTNERS CO. INC., that I am entitled to.

"And I, the said JAMES RUTKIN, do hereby make, constitute and appoint the said JOSEPH H. REINFELD, his heirs, executors, administrators and assigns, to be my true and lawful attorney irrevocable for me and in my name or in the name of JOSEPH H. REINFELD to ask, demand and recover by all lawful means the said six percent of the said issued and outstanding shares of capital stock of the said BROWNE VINTNERS (451) CO. INC. and to do any act which I

might do in connection with the said six percent interest in the said issued and outstanding shares of capital stock.

"In witness whereof, I have hereunto set my hand and seal this day of December, 1936.

A. Rutkin (LS)

In the presence of:

Samuel R. Cohen."

The Court: Is that R. Cohen or A. Cohen?

The Witness: R.

Mr. Tyne: It is R. Cohen.

The Court: All right. Now that you have that read, we will take a recess for five minutes.

(Short recess taken.)

Q. Mr. Reinfeld, Mr. Van Riper made the statement on cross-examination that—

Mr. Van Riper: May I have the page?

Mr. Tyne: Page 175.

Mr. Van Riper: Thank you.

Q. (Continuing) "Our contention is that we owned an interest, sir, and that Reinfeld was taking care of that interest, and Reinfeld was taking care of the fronting of that stuff for us."

Now, I ask you, were you taking care of any interest of Rutkin's? (452) A. No, sir.

Q. In Browne Vintners? A. No, sir.

Q. At any time? A. No, sir.

Q. And I ask you, were you taking care of the fronting of any stuff or stock in Browne Vintners for Rutkin? A. No, sir.

Mr. Van Riper: That should be "stock." I am not very proud of my English. If this is correct, I meant "stock."

Mr. Tyne: We know what you were talking about.

The Court: I wish you could see it if they had me playing any part in that record.

Mr. Van Riper: I would have read it, your Honor.

Q. Mr. Van Riper—page 176—Mr. Van Riper stated—

The Court: I might suggest to you that this is redirect—

Mr. Tyne: Yes.

The Court: And not rebuttal; redirect. Go ahead.

Mr. Tyne: I am going to conclude very shortly, sir.

Q. Mr. Van Riper said, "We are contending that Rutkin had put in new money and had an interest in some of the new stock that was issued in the change of capitalization."

Now I ask you, did Rutkin put in any new money? (453) A. No, sir.

Q. In this company? A. No, sir.

Q. Did he put in any money at all? A. No, sir.

Q. Did you make any statement to Rutkin at any time that the money that he was receiving, $250,000, was tax paid to him? A. I never did.

Q. And did this money come from—strike it out. Was this money, this $250,000 that you paid over, money that you were at that time personally repsonsible for, or subsequently responsible for, and which was paid to Rutkin? A. I don't get that.

Q. Well, strike it out. Was this $250,000 money that came from you, whether directly or indirectly? A. Yes.

Q. Was there any funds of Browne Vintners or anything else such as that? A. (No answer).

Q. Was it any money of Browne Vintners? What I am getting at is, it was your personal funds, wasn't it?

The Court: Whose money was it you gave to Rutkin, if you did?

The Witness: It was my own money.

(454) The Court: Your own money?

The Witness: Yes.

The Court: Was it Browne Vintners' money?

The Witness: It came from Browne Vintners.

The Court: But did it belong to Browne Vintners or did it belong to you?

The Witness: The money belonged to me, yes, sir.

The Court: All right.

Mr. Tyne: No further questions.

Mr. Van Riper: Now, just a question or two, if I may.

Recross examination by Mr. Van Riper:

Q. Where did it come from to you? A. It originally came from Browne Vintners.

Q. It came from Browne Vintners.

The Court: Now, wait a minute. Let's get this straight. Did it come from Browne Vintners to you as your own money or as Browne Vintners' money?

The Witness: It was my money.

Q. Where did the 358,000 come from that went to Zwillman? A. It wasn't Zwillman's money that came through me—from Browne Vintners through me to Zwillman.

Q. On the day that the payoff was made, how much money did Cohen take out of the vault? (455) I don't remember exactly, but it was over $100,000.

Q. It was over 100,000. A. Yes.

Q. And therefore you probably took nearly a half million out, is that right? A. Oh, you mean—thought you meant the three—yes.

Q. Yes. I mean Cohen had about 100,000 in his vault, or over 100,000. A. Over 100,000.

Q. And you had the balance? A. Yes.

Q. Which was, I take it, somewheres near a half million? A. Yes.

Q. Yes. A. Four hundred and sixty-one thousand.

Q. Four hundred and sixty-odd thousand, yes.

Mr. Van Riper: Pardon me, Mr. Reporter; Mr. Tyne said that you had the assignment around some place.

The Reporter: No, sir, I haven't got it here.

Mr. Van Riper: I just wanted to ask a question or two about the assignment. We don't have to have it.

Q. Mr. Reinfeld, this paper that we have been calling the assignment, that Mr. Tyne has just been questioning you about—you understand what I have in mind? A. Yes.

(456) Q. Now, you do not claim, do you, sir, that you acquired any additional stock in Browne Vintners Company by virtue of having Rutkin sign that statement? A. No, sir.

Mr. Van Riper: Thank you; that's all, sir.

The Court: All right.

Mr. Tyne: That's all.

The Court: Step down.

Mr. Tyne: Mr. Pearse.

FREDERIC M. PEARSE, called and sworn on behalf of the Government, testified as follows:

The Clerk: Your name, please?

The Witness: Frederic M. Pearse. I thought you knew it.

Direct examination by Mr. Tyne:

Q. Mr. Pearse, you are a member of the Bar of this State and of this Court? A. I am.

Q. And have been for how long, or do you want to say? A. Well, I am a little bit sensitive about that, it is so long.

The Court: Well, you are well-established at this Bar.

Q. And where is your office, Mr. Pearse? (457) A. Right here in Newark.

Q. Broad Street, Newark? A. Yes.

Q. And—

The Court: You will have to get the address.

The Witness: 744 Broad Street, Judge.

Q. And you— A. This is an awfully uncomfortable chair. I have never sat here before.

Q. And you were there in 1943, were you not? A. Oh, yes.

Q. Did you represent Joseph H. Reinfeld in the early part of 1943? A. Yes, I think that's the right date.

Q. And did you carry on any conversation in connection with claims that were being made against him by others? A. I carried on a number of negotiations.

Q. All right. Now I direct your attention, Mr. Pearse, to your retention on behalf of Mr. Reinfeld in the early part of 1943, when Mr. Popik came to see you. A. Yes, Dave Popik, he is now dead—he came to see me because he had, I understand, been negotiating with Mr. Kessler,

who represented other persons, and—maybe I can put it this way; they weren't getting very far in their negotiations and felt that someone else, maybe someone like (458) me, might be able to be of help, and so I was retained.

Q. All right. And you were retained in connection with what matter then? A. I was retained in connection with certain claims that had been made against Joe Reinfeld—pardon the "Joe," I mean Mr. Joseph Reinfeld, the person who was just on the witness stand.

Q. Yes. A. In reference to some disputes that he had between a man by the name of Abner Zwillman, Joseph Stacher, and James Rutkin, the defendant here.

Q. And did you carry on any negotiations in connection— A. Yes, I did; for maybe two months.

Q. All right. And about how many meetings did you have? A. I couldn't tell you, it is too long ago; it is seven years ago.

Q. With whom did you meet? A. Well, I think most of my conferences were with Sam Kessler.

Q. And where did you meet? A. Either at my office or his office, and I think that on quite a number of those occasions Sam Cohen, the accountant, who is now dead, was present. I think that George—what's his name—

Q. Goldstein? (459) A. Goldstein—I think he was present on some of the occasions; my young associate, Max Mehler, I am quite sure was present, and I have forgotten about Dave Popik, whether he was there or not; I don't remember.

Q. Was James Rutkin, the defendant in this case, present at any of those meetings? A. Oh, yes.

Q. He was? A. Sure.

Q. And did you carry on any negotiations looking towards a settlement of any alleged claims made by James Rutkin? A. No.

Q. Did you ever discuss any claims with Rutkin— A. Never.

Q. —against Joseph H. Reinfeld? A. Never.

Q. Well, whose claims were you interested in on behalf of Mr. Reinfeld? A. Principally with the so-called Zwillman and Stacher claims.

Q. And did you deal with those claims exclusively, even though Rutkin might have been present? A. I don't understand that. That's over my head.

Q. All right, strike it out. Your representation had to do with the Stacher and Zwillman claims against Reinfeld, (460) is that right? A. And also Rutkin, too.

Q. Also Rutkin? A. Sure.

Q. Well, I am asking you again now, Mr. Pearse, you say also Rutkin, I want to know what you did, if anything, in connection with Rutkin's claim? A. Nothing except what my client told me to do.

Q. All right. Now, did that, what your client told you to do, did that happen or have anything to do with these series of negotiations? A. Not very much, no.

Q. Did you finally settle the claims alleged by Stacher and Zwillman? A. Yes.

Q. And what was the settlement figure? A. Well, that's awfully hard to answer. I don't remember the amount. You have got the figures.

The Court: Was it, to the best of your recollection, in the neighborhood of $350,000?

The Witness: Somewhere around there.

The Court: 380,000?

The Witness: Yes, yes; I don't think it went as high as 80; I think it was around about 53—everybody knows what it is; why not tell me?

(461) Q. 358,000; everybody but you, Mr. Pearse. A. Well, I don't recall the exact figures and that's what you are asking.

Q. 358,000? A. Somewhere along there.

Q. Well, I am satisfied by Judge Meaney that I should tell you. 358,000. A. If you say it, Mr. Tyne, it is all right with me.

Q. I see. A. But I am quite sure that was about the amount.

(462) Q. About the amount. But you will qualify it, won't you? A. No, I don't want to qualify it, no.

Q. All right. Now, was $250,000 paid over to Rutkin? A. Yes, at the same time.

Q. At the same time. Now, I am asking, Mr. Pearse, was that amount ever the subject of negotiation by you on behalf of Reinfeld, that $250,000? A. No, I was instructed by Mr. Reinfeld—

Q. To do what? All right, strike it out. Finish your answer. A. (Continuing) I was instructed by Mr. Reinfeld—it is awfully hard to say in one word.

The Court: Well, use a couple of words.

The Witness: Well, all right.

A. May I say this, that I was told by Joe Reinfeld what had happened up in—what's his name, Lou—

Q. Holtz' house. A. —Lou Holtz' house on a Saturday and a Sunday, and I have forgotten the amount that he had agreed to pay to Rutkin, but I was told that the only thing that I had to negotiate were additional claims that Zwillman and Stacher had made against Joe after the conferences in Lou Holtz' cellar.

Q. That's right. A. (Continuing) And that I was not called upon (463) to undertake any negotiations so far as Rutkin was concerned, but that if the matters were settled I was to pay Rutkin $250,000; which I did.

Q. You say the matters between Rutkin—between Stacher and Zwillman and Reinfeld, is that what you refer to? A. Yes, yes; certainly.

Q. All right. Now, they were, those matters— A. They had made additional claims and I hope the manner in which I handled the thing was satisfactory to my client because I settled the matter, so far as Zwillman and Stacher were concerned, on the same basis that Joe had made in Lou Holtz' cellar.

Q. I see. A. (Continuing) In other words, I had dissuaded the other fellows from making the additional claims which they did make because I said they could not be substantiated. I think that is about it.

Q. When you say "the other fellows"— A. I am talking about Zwillman—

The Court: And Stacher.

A. —and Stacher, represented by Sam Kessler, who is a very astute lawyer, and I think when all these conferences took place there were a great many figures, and I am not an expert on figures. Of course, I mean mathematical figures, Judge. And I listened to the accountants and listened to (464) what they had to say. My young associate, Max Mehler, was present on all of these occasions, and we finally reached a conclusion and then I made my little speech in which I said, "Sam, we are not going to pay you any more," that is, to Zwillman and Stacher, "than what you settled for up in Lou Holtz's cellar." Then, of course, I had to pay the money, you know—I didn't pay it.

Q. I am coming to that, I just want to let you finish. Then on or about May 11th, 1943, you did pay this money over, did you not? A. I wonder if that is the right date, I don't know.

The Court: Well, on or about.

A. All right. You got a release here.

Q. Yes. Now, on or about May 11th, 1943, you did pay the money over? A. Yes, I did.

Q. All right. A. I didn't pay it over, I superintended the payment; it took quite a long time, too. I never saw so much money in my life.

Q. That money, totaling $608,000, was paid over in Sam Kessler's office, is that right? A. Yes. Would you like to hear how that happened I had an office in 744 Broad Street and my office was much more open than Sam Kessler's, and my library was open, so it (465) was rather hard to close, and when these two or three fellows walked up with a couple of dress suitcases I became rather frightened because I was told that those dress suitcases contained money, and so I suggested, I think to Sam Kessler, that in view of the fact that his library had more seclusion that perhaps these boys better walk over to his library and I will follow them; and there we will count the money. And that is the way it happened.

Q. And did you pay over $358,000 to Zwillman? A. My recollection—my recollection is that the amount which had been agreed upon was there, after it had been counted, except $10.

Q. Except $10! Well, there were two payments here, were there not, one for $358,000 and one for $250,000? A. Yes, we gave Rutkin $250,000.

The Court: Who was done out of the ten?

The Witness: I have forgotten that. I am quite sure I wasn't.

Q. All right. You paid over the $250,000 to Rutkin and the $358,000 to Zwillman, is that so? A. Well, that's right. As a matter of fact, I think I am correct in making this statement, I think Mr. Rutkin and Mr. Stacher counted the money as it was handed over to them by whoever, I don't remember whether it was Lou Holtz, but someone sitting alongside of me.

(466) Q. You say they counted each individual bill, isn't that right? A. No, they didn't count each individual bill, it was all wrapped up by the bank, you know, and then they thumbed through it to make sure that the bank hadn't made a mistake.

Q. They would go through each pile, each pile of bills? A. That is right. It took all afternoon.

The Court: Where was the ten bucks?

The Witness: I have forgotten about that, Judge. Of course, it was seven years ago and that $10 is impressed on my mind and those are little things that you know you can never forget.

Q. Well, Mr. Pearse, did you see Mr. Holtz count the money over before it was delivered to these persons who in turn counted it? A. Listen, I was sitting there and the money was paid over to them.

Q. I want— A. They got their money and I got a receipt.

Q. Yes. A. (Continuing) Or a release, or whatever you want to call it.

Q. Sure. Well, Mr. Holtz turned the money over, $250,000, to Rutkin and the $358,000 to Zwillman, is that so? (467) A. Please don't ask me to go into details. I was sitting on one side of the table with the fellows who had the money; Stacher and Zwillman were sitting on the other side of the table; I am not sure whether one of the accountants wasn't in there, I am not sure about that. The only thing I am sure about is that Sam Kessler was in and out.

Q. And you did get a release, did you not? A. Yes. Let me see it, will you please?

Q. Here is the original, and I will present the photostat to you in just a minute. A. This is all right, if your Honor please. This is a paper which was prepared by David Popik.

Q. Now, referring to—

Mr. Tyne: Let's have this marked.

The Clerk: It was marked.

Mr. Tyne: Is this another one, Mr. Van Riper?

Mr. Van Riper: Isn't that the one that is marked?

Mr. Tyne: No.

The Witness: No, that is not marked, if the Court please.

Mr. Tyne: I just want to identify it for the record.

The Clerk: It was marked D-8.

Q. Referring to D-8, Mr. Pearse— A. Yes, sir.

(468) Q. —that is the release? A. Yes, that's right. This, if the Court please, this release was prepared by David Popik, who was a very—during his lifetime—was a very painstaking and meticulous lawyer.

The Court: Pediculous or meticulous?

The Witness: Pardon me? I thought I said meticulous.

The Court: Meticulous.

A. (Continuing) And I had no part in the preparation of this paper. He simply wanted to make sure.

The Court: It was signed by all those parties?

The Witness: Yes, it was, and I acted as a witness to the signatures; so did Samuel Kessler and so did Popik, himself.

The Court: All right.

A. There was no particular significance to it.

Mr. Tyne: Cross examine.

Cross examination by Mr. Van Riper:

Q. Mr. Pearse, as I understand it, you said a moment ago, you referred to the fact that you made your little speech when you said to Mr. Kessler, "Sam, we will pay what we agreed to pay in the cellar and no more," or words to that effect? (469) A. Well, words to that effect. Now, please don't—

Q. No, no. That is what you finally did pay, is it not? A. That is exactly what we finally paid.

Q. And before you made that speech, and before you had any of the conferences with Mr. Kessler, isn't it a fact that Mr. Reinfeld informed you that he had agreed in the cellar to pay the amount that eventually was paid? A. Yes.

Q. Yes. Now, Mr. Pearse, just one or two more questions, please. Do you remember a meeting in Mr. Kessler's office at which Mr. Kessler was present, Mr. Popik, Mr. Mehler, yourself, of course, Mr. Stillman—Mr. Zwillman, Mr. Stacher and Mr. Rutkin, at which Mr. Kessler told Rutkin and Reinfeld to go in the other room and settle their difference without any lawyers? A. No, not that expression.

Q. Well, did they go into another room? A. That's the best of my recollection, and I have searched my recollection and I have tried to make sure that—because I knew how important it was in this case, and I have reached the conclusion after searching my own recollection and my own conscience, I can't agree with Mr. Reinfeld on that. I was not at Lou Holtz' house, I don't know whether Reinfeld and—what's his name?

Q. Rutkin. (470) A. Rutkin went into another room while they were up there. But something, I don't know what it was, has impressed my mind with the idea of this; Joe Reinfeld told me that—by the way, I am allowed to say this, Judge, because while it may be in confidential communication, I have been released by my client.

The Court: All right.

A. My recollection is this: That on the last day—no, wait a minute. Before the last day.

The Court: Before the last day of what?

The Witness: On the conferences on which the—not the money paid but the settlement was worked out, I am sure that Joe said to me, "I have nothing to negotiate so far as Rutkin is concerned because," and this is the way I recall it "because I am going to pay him $250,000." I never asked him and he never told me what it was for. But whether or not it was $250,000 it was agreed upon between him and Rutkin up in Lou Holtz' cellar, I am sure I don't know.

Q. And by the same token, Mr. Pearse, you did not negotiate with Zwillman and Stacher against the payment of $358,000, you do not remember the exact amount, but approximately $350,000, which had previously been agreed to, did you? The negotiation was only on the extra claims? A. Well, let's see, that took me a couple of months, to (471) persuade them that they weren't entitled to any more.

Q. They weren't entitled to any more, that's correct. Now, Mr. Pearse, just one more question. Some time before this money was paid over was the information conveyed to you that the money was all tax paid? A. Well, that's another thing that bothered me about it. As I said a moment ago, I am not much good on mathematical figures and a large part of that work was left to Sam Cohen, who is now dead, and I have said it before, and I say it again, that being a lawyer and representing my client, and people on the other side, that I knew and knowing the tremendous sums of money involved, that I must have been either informed or impressed.

Colloquy of Court and Counsel

The Court: No, no. Don't tell us what you must have been told. Your best recollection.

The Witness: All right. I am quite sure that in conferences with Sam Cohen, the accountant, that I was assured by him that any money that was paid over to either party was, I don't know what you would call it, capital gains tax or what not. In other words, it was free and clear.

Q. Of taxes? A. Yes, sir.

Q. Just one more question. Did Mr. Reinfeld—

Mr. Tyne: Wait a minute. Of course I object to (472) that, that testimony there. I don't think it is quite clear. He hasn't shown the party and, furthermore, it is hearsay testimony coming from somebody else, from Mr. Cohen.

The Court: I sustain your objection.

Mr. Tyne: And I ask the Court it be stricken.

The Court: I sustain the objection.

Mr. Tyne: And I ask the Jury to disregard it.

Mr. Van Riper: If your Honor please, may I be heard on that?

The Court: Yes.

Mr. Van Riper: Here the witness testifies to a statement which he says he believes was made to him by Sam Cohen, the man who has been testified by Reinfeld as being the man who handled this so-called revolving fund into which all of the front men, and out of which all of the front men came, and a man who was representing Reinfeld and representing Browne Vintners.

The Court: He was not representing Reinfeld in negotiations with Rutkin.

Mr. Van Riper: If your Honor please—

The Court: I won't allow it. You may have an exception.

Mr. Van Riper: May I have an exception?

Q. Mr. Pearse, at any time did Mr. Reinfeld ever say (473) to you that Rutkin had threatened him or intimidated him or used a gun on him? A. No.

Mr. Van Riper: Thank you, sir.

Mr. Tyne: That's all.

The Court: All right, sir.

The Witness: Is that all for me?

The Court: Step down and contemplate figures now.

The Witness: Thank you.

(Witness excused.)

Mr. Van Riper: I missed it, it was apparently good.

The Court: I told him to step down and contemplate figures now, mathematically.

Mr. Van Riper: He can go look for that ten dollars.

(Discussion off the record at bench.)

JAMES J. BONANNO, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. Tyne:

Q. Mr. Bonanno, where do you reside? A. 137-21 241st Street, Rosedale, Long Island.

Q. By whom are you employed? A. Bureau of Internal Revenue.

Q. In what capacity? (474) A. Internal Revenue

James J. Bonanno—for Government—Direct

Q. Did you make an audit, an examination, of the income tax return of the defendant's case, James Rutkin? A. I did.

Q. For the year 1943? A. I did.

Mr. Van Riper: What do you want? Maybe we can admit something.

Mr. Tyne: I want to ask a hypothetical question to compute the tax on the income of $250,000, other income, $250,000 over and above the reported income.

Mr. Van Riper: We are not going to be technical about figures, we are either in or out. Ask him the question and I will admit the answer.

Mr. Tyne: Well, can we stipulate it?

Mr. Van Riper: I will stipulate that the witness will say that the tax will have been so much money.

Mr. Tyne: All right.

Mr. Van Riper: Just as would the tax have been so much, and I will admit it.

The Court: As I recall it, the return showed a net income of $18,966.64 and that the tax due thereon was $6,843.93. Is that so?

The Witness: That's right.

The Court: Now, if there had been an additional (475) $250,000 taxable income what would the tax have amounted to?

The Witness: It would have been $222,408.32.

Mr. Van Riper: I am sorry, two hundred and what?

The Witness: $222,408.32.

Mr. Van Riper: All right.

Mr. Tyne: Income and victory tax for the year 1943.

The Court: Does that express your question?

Mr. Tyne: Yes, I think so.

Mr. Van Riper: No cross-examination.

The Court: Anything further from this witness?

Mr. Tyne: Of course we are assuming that is the income this year for this defendant.

The Court: The question I asked was that if in addition to that there had been a further $250,000 of taxable income what would have been the tax that was due?

Mr. Tyne: That's sufficient, sir.

The Witness: Hold it. The tax that would have been due, the deficiency would have been $215,564.39.

By Mr. Tyne:

Q. Deducting the tax that was paid? A. Deducting the $6300 that was paid.

The Court: But there would have been paid $222,408.32 instead of $6,843.39.

The Witness: That's right; there would have been due $222,408.32; there was paid $6,843.39.

(476) The Court: All right. You would have a deficiency of $215,564.39. All right.

Mr. Tyne: The Government rests, if your Honor please.

(477) Mr. Tyne: The Government rests.

Mr. Van Riper: May I call a quick witness, if your Honor please?

The Court: Yes. Mr. Van Riper, this will not interfere with any motions you may have to make.

Mr. Van Riper: I assumed that. I am calling this witness so that he can get out; thank you, sir.

The Court: We are closing shortly at 4 o'clock.

Benjamin Gaines—for Defendant—Direct

BENJAMIN GAINES, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Gaines, where do you live? A. Miami Beach, Florida.

Q. What is your business? A. Building business.

Q. You are here under subpoena? A. Yes.

Q. Do you know Mr. Rutkin? A. Yes, sir.

Q. Do you know Mr. Reinfeld? A. Yes, sir.

Q. How long have you known them? A. Well, I have known Mr. Rutkin, I would say from 1935 or '36; around that.

(478) Q. How long have you known Reinfeld? A. About '36, I would say.

Q. In 1935, '36 or '37 did you run a restaurant or a bar in Boston? A. Ran a restaurant.

Q. What was the name of it? A. Mayfair Restaurant.

Q. Did you sell liquor there? A. Yes, sir.

Q. I mean had a bar there? A. Yes, sir.

Q. Now, in or around that year did Rutkin or Reinfeld come into your place. A. Yes, sir.

Q. And did Rutkin introduce Reinfeld to you?

Mr. Tyne: I object to the leading question, and let the time be fixed.

Q. Had you known Reinfeld before that? A. I knew Rutkin before I knew Reinfeld.

Q. Who introduced Reinfeld to you? A. Mr. Rutkin.

Q. What did he say when he introduced him to you? A. I want to introduce my partner, Joe Reinfeld.

Q. Did you have a talk with him about whiskey? A. Yes, sir.

(479) Q. What was the talk about? A. Mr. Rutkin asked me if I would be good enough to try to pour his White Horse stock. I said I would be very happy to do it and he thanked me and that was all the conversation.

Q. Subsequently did you buy an interest in the Dempsey-Vanderbilt Hotel in Miami Beach. A. Yes.

Q. Whom were you in partners with? A. Mr. Jim Rutkin and Mr. Jack Dempsey.

Q. And from whom did you buy your interest in that business? A. Jim Rutkin.

Q. How long did you have your interest? A. Well, I bought my interest from Mr. Jim Rutkin in the fall of '37 and I operated the hotel until April 1st, 1942, when I turned it over to the United States Army during the war.

Q. Now, when you bought your interest from Rutkin, did you have a conversation with Rutkin in New York? A. Yes, sir.

Q. Whereabouts in New York? A. Well, the first conversation I had with Mr. Rutkin about purchasing an interest in the hotel was in Boston.

Mr. Tyne: No conversation.

Q. I don't want a conversation. Did you have a conversation in New York? (480) A. Yes.

Q. Whereabouts? A. In the Browne Vintners offices.

Q. In an inside room? A. In a private office.

Q. Was anyone else there besides you and Rutkin? A. Not at that time, no, sir.

Q. And after you discussed with Rutkin for some time the purchase of the hotel in Florida, did anyone come in the room? A. Mr. Rutkin. Mr. Rutkin said—

Q. Never mind what Rutkin said. Did Mr. Rutkin go out? A. He went out for a few minutes.

Q. And did he bring somebody back? A. He brought Mr. Reinfeld back.

Benjamin Gaines—for Defendant—Cross

Q. Now, when Mr. Reinfeld got back there, what did Mr. Rutkin say? A. Mr. Rutkin explained the proposition I had submitted to him and Mr. Reinfeld said "Jim, if it's all right with you, it is all right with me; go ahead."

Q. And did that proposition have to do with the sale by Rutkin of his interests in the Miami Beach Hotel? A. Yes.

Q. And you subsequently bought it? A. Yes, sir.

Q. And how much did you pay Rutkin? (481) A. $60,000.

Cross examination by Mr. Tyne:

Q. When did you take over your initial interest in the Dempsey-Vanderbilt Hotel? A. You mean the entire stock, sir?

Q. Initially when did you first go into it? A. In the fall of '37.

Q. When did Rutkin go into it? A. I believe the hotel opened approximately, I believe it was New Year's Eve of '37.

Q. He went down there in 1936, did he not? A. Yes, sir, but the hotel wasn't opened until New Year's Eve of '37. I had nothing to do with it at that time.

Q. You had nothing to do with it, but do you know how long Rutkin had been in it before you got into it? A. Oh, I would say approximately seven or eight months.

Q. When you come into it there had been quite a lot of indebtedness accumulated, hadn't there? A. Some indebtedness.

Q. As a matter of fact, the thing was so much in debt that you had to pay off the debt in order to get Rutkin out of it, isn't that so? A. No, sir.

Q. How much debt did you pay off? (482) A. I would say approximately $6,000 that they owed some liquor dealer.

Q. And what else? A. That's all I remember.

Q. How about the mortgage? A. There was no mortgage on the property.

Q. Did you lease it or buy it? A. It was leased.

Q. What other obligations were against the hotel? A. Creditors, you mean?

The Court: Against the hotel or the lease?

Mr. Tyne: The leasehold interest.

A. Nobody.

Q. Nobody? A. Nobody that I know of, no creditors.

Q. You say that you paid over $60,000 directly to Rutkin? A. Yes, sir.

Q. How much was it actually? A. Approximately $60,000.

Q. Well, when you say approximately, that means fifty or— A. No, a couple of thousand dollars one way or the other.

Q. One way or the other. Did you pay it by check or by cash? A. I didn't pay it all at one time. I paid him by check but not all at one time.

(483) Q. Do you have those checks? A. No, sir, I have not.

Q. Well, you knew you were coming here to testify in connection with this case, isn't that so? A. Yes, sir. I haven't got the checks.

Q. Didn't you think it necessary to produce the checks? A. If I had them, I would be happy to produce them.

Q. Do you have them? A. No, sir.

Q. What happened to them? A. I destroyed a lot of the records that I had from away back that far.

Q. Do you still have the hotel A. No, sir, a lot of records were left in the hotel when the Army took it over. They moved in on me overnight.

Q. And you say that you paid them with a series of checks? A. Yes.

Q. Over what period of time? A. I think the first payment was $40,000, sir.

Q. $40,000? A. Yes, sir.

Q. In cash or by check? A. Check. And about six months later, I would say in the spring of, well, '38 I paid him back.

Q. Did you get a receipt or release or anything from him? (484) A. I got stock in the corporation.

Q. What corporation was it? A. The Dempsey-Vanderbilt Hotel, Inc.

Q. Did you get the stock of the corporation? A. Yes, sir.

Q. From whom? A. Mr. Rutkin.

Q. Did you acquire Dempsey's interest, too? A. I acquired Dempsey's interest about two years later.

Q. Did you buy him out? A. Mr. Dempsey?

Q. Yes. A. Yes.

Q. How much did you pay him? A. Well, very little, sir, I don't remember but it was very little because he had owed some money to the corporation.

Q. Well, all during this period of time both Dempsey and Rutkin were in debt to the corporation, isn't that so? A. They weren't in debt to the corporation.

Q. Isn't it a fact—

Mr. Van Riper: Let him finish his answer.

Q. And isn't it a fact that during this time Rutkin was siphoning off the profits of the hotel from the business? A. No, he had no authority to get anything out of the hotel even if he wanted to get it.

(485) Q. He didn't. A. No, sir.

Q. Even though he was a stockholder? A. No.

Q. And even though he held the leasehold interest? A. He didn't hold the leasehold interest; there was a corporation that held it.

Q. Didn't he have an interest in the corporation? A. Yes, sir.

Q. What was his interest in the corporation? A. Just a stockholder's.

Q. He wasn't president or secretary or anything like that? A. No, I believe Jack Dempsey was president; if I remember correctly, I was secretary and treasurer.

Q. That is the year after Rutkin took it over; is that so? A. No. At the time I went in.

Q. The time you went in? A. Yes.

Q. You deducted $6,000 in debt from the amount that you paid— A. No, sir. The corporation paid that.

Q. The corporation paid it A. Paid the debts to the liquor dealers.

Q. And was the corporation dissolved? A. The corporation was dissolved, I believe, in the fall (486) of 1942, went out of business.

Q. Have you any evidence of the assignment of this stock from Rutkin to you in the corporation? A. No, sir, I haven't.

Q. You didn't bring any papers along to support what you have testified to? A. As I stated before, a lot of the records were left in the hotel when the Army moved in. They moved in practically overnight.

Q. You didn't think it would be necessary to preserve them? A. The corporation had been dissolved in '42; I had no more use for the stock anyhow.

The Court: All right.

Motion for Verdict of Acquittal—Argument Thereon

(487) Newark, New Jersey,
Monday, October 16, 1950.

(Trial resumed pursuant to adjournment.)

(Appearances as before noted.)

Mr. Van Riper: If your Honor please, Mr. Cohen will present a motion for the defense.

Mr. Cohen: If your Honor please, the defendant at this time moves the Court for the direction of a verdict of acquittal upon the following grounds: First, that the Government has failed to prove every element of the offense for which this defendant has been indicted, beyond a reasonable doubt.

Secondly, that the Government has failed to prove as is required by the statute and the law, beyond a reasonable doubt, that the income with which this defendant is charged that he had received it and had failed to pay a tax, we contend that the income is not taxable.

Thirdly, upon the ground that the Government has failed to make out such a prima facie case as to charge the defendant with entering a defense.

Fourthly, defense counsel contends, and very earnestly and seriously, your Honor, that the Government has failed in this case to present facts upon which the Jury could infer that there was any evidence or any element of wilfulness as is required by both the indictment and the statute.

If your Honor please, with respect to this last (488) point the indictment reads that the defendant represents that the defendant did wilfully attempt to defeat and evade a large part of the income and victory tax due and owing by him.

(489) Now, for a complete understanding of the point that we argued here, your Honor, we refer to

Title 26 of the U. S. Code, both as to the section under which the defendant was indicted, which is 145(b) and the two sections which both precede and follow it, both section (a) and section (c).

Section (a) says that it shall be a misdemeanor either to fail to file any return or to fail to pay any tax that may be due from a defendant.

Section (c) says that it shall be a felony to wilfully subscribe to and make a return which is false in any material particular.

So what your Honor sees involved there in these three sections are three separate offenses.

Now, the question of the difference in proof that is required before a case may go to the jury under this section, Section (b), was first presented to any court of record that we find in an old decision, which was O'Brien versus the United States, reported in 51 Federal (2nd) at page 193. That was a decision of the 7th Circuit; and for the first time in that case there was presented squarely to the Court a question which was later decided by the Spies case, the citation of which I shall give your Honor in a moment; and that question most clearly stated is this: Where the Government in an indictment (490) and the proof of the allegations of an indictment under 145(b) proves simply that the defendant received money which was taxable and failed to report the same in his income tax, will the mere omission or the failure to make the return or to include in that return the money which he received be sufficient from which the jury may infer that the failure to declare it was wilfull within the sense of this section.

The Court in that case ruled against the defendant on the point and held that it was sufficient.

However, there was a dissenting opinion by Judge Altschuler, which at that time was simply a voice crying in the wilderness. However, Judge Altschuler's dissenting opinion was further amplified by another dissenting opinion by Judge Hand.

The Court: Well, I wouldn't waste time on any dissenting opinions, if I were you, because I intend to set no precedent by upsetting the established law.

Mr. Cohen: I merely mention—

The Court: If you will let me have the prevailing opinion, we will get along better.

Mr. Cohen: I merely mention those, your Honor, because those dissenting opinions did become the prevailing opinion. I want to give your Honor the continuity.

(491) The dissenting opinion in both the O'Brien case and Judge Hand's later dissenting decision in the Circuit Court Opinion in the Spies case was fully and completely adopted by our own Supreme Court of the United States in the case of Spies versus the United States, 63 Supreme Court Reports at page 364; 371 U. S., page 492.

The situation there, your Honor, was this: A defendant had been indicted under both Sections 145(a) and 145(b). The evidence in the case was that this defendant demanded and received payment of a large sum of money in cash. He thereupon transported this money to various banks, and deposited it under assumed names. There was a request at the conclusion of the Government's case for the direction of a judgment of acquittal as to the indictment under 145(b). It was the contention of the defense, just as we contend, that the same elements of proof, or factual proof upon which the Government may sustain the conviction under Section (a),

will not sustain a conviction under (b), because in the first section all you need for a conviction is proof the defendant failed to do something; I think to make a return.

The Court: I am aware of the element of wilfulness which is alleged in the indictment under which this man is being tried.

Mr. Cohen: Now, in the Spies case, if your Honor (492) please, the Court said this, and we think said it very, very clearly: That if the only proof as to the element of wilfulness is the failure to include in a return taxable income, the defendant is entitled to a direction of acquittal.

The Court specifically said in that case that unless the evidence on the part of the Government includes affirmative acts—and they mention certain acts by way of illustration—that the defendant must be acquitted. And some of the acts that they mention were keeping of false books and other things, which they call the indicia of an attempt at concealment.

Now, counsel feels it is very important, your Honor, to keep one thing in mind in reviewing the scope of the Spies opinion, and that is this: That the Court, and Section 145(c), clearly indicate that the affirmative acts which must be committed by the defendant to support a conviction under this Section must be acts not in connection with the return itself.

Now, the Spies case specifically says that, your Honor, and we contend that in this particular case there is no proof of such affirmative acts, that in so far as there is any proof on the part of the Government with respect to any element of wilfulness,

it was simply the failure to return or to declare this money in the return?

Now, the Spies case has been considered in several (493) court opinions, if your Honor please, and counsel has suggested all those opinions and would like to refer to them to indicate to your Honor that our contention is the thing one has accepted by the various Federal Circuit Courts.

(494) Now, the first case after the decision in the Spies case which considered the problems was Mayfield vs. United States, 152 Fed. 2nd 593, which was a decision of the 9th Circuit in January of 1946. Now, the Court in this case denied the motion for a direction of acquittal but as is very clear from its language at page 597, this decision was based on a situation where the evidence disclosed many positive acts of the nature mentioned in the Spies case, and the Court said: "Appellants planned to keep two sets of books—one for exhibition purposes only; that they anticipated the receipt of a large income from stock and desired to keep their taxes to a minimum. That, to avoid taxes, their books showed no ownership of property when in fact they owned property of very substantial value."

I point that out to your Honor to indicate that we have the affirmative case, mentioned there that the Spies case talks about and that in connection with the return itself we then have the next case which bears on the situation, which is Myers vs. United States, 174 Fed. 2nd at page 329, a decision in the 8th Circuit in June of 1949.

The indictment in this case was also under Section (b). In this case again the evidence discloses active and overt acts of the type mentioned in the Spies case. (495) Here the acts consisted of the

failure to keep books and records of income, repeated deductions of the same items of expense, and the withholding from Government agents during the investigation of case files and canceled checks, which were definitely indicative of an attempt to conceal his income even during the investigation by the Goverment agent.

The next case that will shed any light on the situation is Schuermann vs. United States, 174 Fed. 2nd, at page 397 also decided in 1949.

The indictment in this case was likewise under Section (b). Now, this case most clearly indicates an understanding of the principles laid down in the Spies case. To support its decision that the case was one which should go to the jury, the Court went so far as to list the overt acts committed by the defendant. Overt acts, the Court said, must be proven before the case can go to the jury and at page 398 the Court said: "The evidence disclosed the usual badges or indicia of the deliberate concealment of income, namely, (1) intentional failure to maintain financial records; (2) a much visited safety deposit box rented under an assumed name; (3) the use by the defendant in his dealings of large sums of currency; (4) purchase of property by the defendant in other's names. So that again to sustain a conviction in that case or (496) refusal to take the case from the jury in line with the Spies case, we do therefore have those overt acts and therefore the case will go to the jury.

Now, there is only one case, your Honor, that appears to hold to the contrary and that was the decision in the case of Cave vs. United States, 139 Fed. 2nd, page 464, which was a decision of the 8th

Circuit in 1947 before the lafer decision in the 8th Circuit.

Now, unfortunately it is not clear from a reading of that case, at least not to me, as to whether or not there were in that case the overt acts required in the Spies case. Now I don't know whether they were present or not, so that as I say, the case, to me at least, is not much help in deciding the situation, but in view of the decision in the Spies case, your Honor, and the other later decisions I have cited to your Honor from the various circuits, it appears that in the instant case we have no such proof of the affirmative acts. The proof is to the contrary. The proof is that the defendant did not demand this money in cash but that it was paid in cash; that it was paid in the presence of at least three lawyers, and several accountants; that there was no evidence at all of concealment. The only evidence of wilfullness that the Government has produced in this case is a failure to include that sum of money which they allege was taxable in a man's return.

(497) Under those facts and circumstances, we submit to your Honor that there should be an order of direction of acquittal in this case.

The Court: Mr. Cohen, it seems to me that under your construction of the Spies case, there could never be a conviction under Section (b)-145. A directed verdict would have to be made in every case. But here you have uncontroverted and uncontradicted, so far, a situation where the defendant is alleged to have threatened the man with violence and used a gun in the threat, and threatened to kill him and his family, and according to the testimony so far adduced, uncontradicted and uncontroverted so

far, the money was paid over not for any other purpose except to assuage the murderous instincts or threats of the defendant, and that he received the money and that he did not report it and did not pay any income tax on it. As I say, it is only the Government's case so far and I daresay that your associate counsel will very ably introduce evidence to controvert that; but certainly on the situation as it stands now, there is a distinct question for the jury and I shall deny your motion. You may have an exception.

Mr. Cohen: Before your Honor has ruled, I would simply like to have two minutes to reply to the question.

The Court: No, there is no need of replying. Are you read to proceed, gentlemen?

Mr. Van Riper: Yes, sir.

The Court: All right, you may send for the jury.

(498) (The trial was resumed in the presence of the Jury as follows):

Mr. Van Riper: Mr, Dempsey.

WILLIAM HARRISON DEMPSEY, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

* * *

Direct examination by Mr. Van Riper:

* * *

Q. Mr. Dempsey, do you know Mr. Rutkin, the defendant here? A. Yes, sir, I do.

Q. Do you know Joseph H. Reinfeld? A. Yes, sir, I do.

Q. When did you first meet Mr. Reinfeld, about, do you recall? A. Well, I think it was around about the fall of 1936, before we opened our place.

Q. And who introduced you to Mr. Reinfeld? A. Mr. Rutkin.

Q. And where did that introduction take place? (499) A. We went up in Mr. Reinfeld's office; I think it was in Rockefeller Center, his office.

Q. Was that the office of the Browne Vintners Company? A. Browne Vintners, yes, sir.

Q. And you had known Rutkin for some time before that? A. Casually, yes.

Q. Now, I take it that there was some conversation at the time of the introduction? A. Yes, sir.

Q. Will you tell us what Mr. Rutkin said, please? A. Well, this proposition—we were figuring on opening a hotel or a restaurant in Florida, so he and his associates—"Well", I says, "who is your associates"? He said again, "My partner, Mr. Rutkin", and some other associate—or Mr. Reinfeld.

* * *

Q. Before you met Mr. Reinfeld, you and Rutkin had a conversation. I don't care about the details. A. Yes, sir.

(500) Q. But a conversation with reference to the Florida Hotel, is that correct? A. Yes, sir, that's right.

Q. Then you and Rutkin went to see Mr. Reinfeld? A. Yes, sir.

Q. Now, will you tell us what Mr. Rutkin said and what Mr. Reinfeld said?

Mr. Tyne: Can we fix the time, sir?

Mr. Van Riper: I said in the fall of 1938.

The Court: Yes.

A. I was interested in who was going to put the money up and who was going to be responsible and Mr. Rutkin, as I

understand it, was a member and Mr. Reinfeld was his partner and—

Mr. Tyne: No, I object to that, if your Honor please, and ask that it be stricken out.

• • • •

A. Well, I wanted to know who was responsible for this money. Mr. Reinfeld said he would be responsible for five years for anything that Mr. Rutkin did.

Q. Responsible for five years. Now, in what way? Responsible for what? (501) A. For any debts or any liabilities incurred by the hotel.

Mr. Tyne: May I ask if that's something that was said by Reinfeld or by Rutkin?

The Witness: It was said by Mr. Reinfeld.

Mr. Tyne: To you? ——.

The Witness: To the three of us. We were all there in this room.

Q. Now then, when Mr. Rutkin actually formally introduced you to Mr. Reinfeld, can you tell us the language that he used, Mr. Dempsey, if you will? A. Well, it has been pretty long ago, it is hard to tell the exact—

The Court: Just give the sense of it.

A. Well, we were going to open up this hotel and as I have always understood and thought that they were—.

Mr. Tyne: No, I object.

The Court: No, not your understanding and thinking; just tell us what took place when you met Reinfeld with Rutkin and what was said.

A. Well, I was introduced to Mr. Reinfeld as Mr. Rutkin's partner.

The Court: All right.

Q. All right. A. And he was going to be responsible for anything that Mr. Rutkin did.

(502) Q. All right. A. Any liabilities or any bills.

Q. Then as a result of that conversation did you go into business with Rutkin in the Vanderbilt-Dempsey Hotel? A. Yes, sir. We opened the hotel.

Q. And Rutkin came in as a partner, did he not? A. Yes, sir.

* * *

Q. Did Rutkin come in as a partner? A. Yes, we all came in as partners.

Q. Did Rutkin put money in it? A. Yes, sir.

Q. Now, who ran the hotel? A. We had a manager down there.

Q. You had a manager.

The Court: How much money did Rutkin put in?

The Witness: I don't remember at the present time, Judge.

* * *

Q. Did you handle the finances? A. No, sir.

Q. Who handled that? (503) A. My lawyer was a man named Sol Rosenblatt and a man named Werle, in Miami, Florida.

Q. Werle was a lawyer or accountant? A. Lawyer.

Q. A lawyer down there? A. And Mr. Rosenblatt was a lawyer, too.

Q. Who handled the finances at the hotel? A. Well, they had a man named Mr. Cohen, but he was Mr. Reinfeld's accountant.

Q. Was he in Miami? A. He was there part of the time and he had an assistant accountant down there.

Q. Oh, Mr. Cohen, who was Reinfeld's accountant, came down there to Miami at the hotel? A. Yes, sir. He set the whole thing up.

Q. He set up the books of the Vanderbilt-Dempsey Hotel? A. Yes, sir.

Q. I said the books, maybe that isn't what you meant to say; but did he set up the financial structure? A. Yes.

Q. Now, do you recall while Rutkin was a partner in the Miami Hotel, Mr. Reinfeld coming down and staying at the hotel? A. Yes, sir, he was there several times.

Q. Mr. Dempsey, did you ever say to Mr. Reinfeld, speaking (504) of Rutkin, that the money that comes in at night Rutkin takes out in the morning and gives to the bookies? A. I never said that and it wasn't true.

Q. And did you ever say anything to that effect? A. My association with Mr. Rutkin was only the finest.

Q. And I take it you never said anything to that effect? A. It couldn't have been true.

Q. Now, Mr. Dempsey, were you interested in a whiskey known as Jack Dempsey Whiskey? A. Yes, sir, I was.

Q. And was Mr. Rutkin interested in that Jack Dempsey Whiskey? A. No, sir.

Q. Was that a product of McKesson and Robbins? A. McKesson and Robbins and Schenley.

Q. And Schenley. Did Mr. Rutkin have anything to do with it whatsoever? A. Except introduce me to Jack Owen, who was at that time the vice-president of McKesson Robbins.

Q. But did he have any interest in Jack Dempsey Whiskey? A. No, sir, none whatsoever.

Q. Now, you had various restaurants around—in and about New York City, did you not? A. Yes, sir.

Q. And you have sold liquor in those restaurants? (505) A. Yes, sir.

Q. Did you ever buy any whiskey from Mr. Rutkin? A Through him, he arranged for us to get whiskey from the Browne Vintners.

Q. And what kind of whiskey did you get from him, do you know? A. Well, it was White Horse and Wilson, and whatever their products were. That is about all that we used.

Q. And did Rutkin contact you with reference to a purchase of those whiskies? A. Yes, sir.

Q. And they were bought from Browne Vintners? A. Yes, sir.

Q. Now, did you ever visit the Browne Vintners' office with Mr. Rutkin in your capacity as a customer? A. Several times.

Q. And were you ever entertained by him there? A. Well, they had a little bar up there, probably had a drink or so.

Q. That was the extent of the entertainment? A. Yes, sir.

Q. But you were there with him in your capacity as a customer.

Mr. Van Riper: Cross examine.

(506) *Cross examination by Mr. Tyne:*

Q. You knew Reinfeld, did you not, Mr. Dempsey, before you knew Mr. Rutkin? A. No, I don't remember meeting Mr. Reinfeld until Mr. Rutkin introduced me up in his office.

Q. Do you remember when that was? A. Sir?

Q. Do you know when that was A. Well, it was along about the time we made this deal; I think it was some time in the fall of 1936.

Q. At that time you were introduced, you say, to Mr. Reinfeld? A. By Mr. Rutkin.

Q. Yes, by Mr. Rutkin. And there was some conversation relating to the putting of money into the Dempsey-Vanderbilt Hotel, is that right? A. Yes, sir.

William Harrison Dempsey—for Defendant—Cross

Q. Whose idea was it to call it the Dempsey-Vanderbilt Hotel? A. Well, I think the name was already on there and to have my name associated with it, we combined it. I don't know whether it was mine or Mr. Rutkin's, or who thought of it.

Q. You say, Mr. Dempsey, Mr. Reinfeld said that he would guarantee all debts, bills, and so on, for five years? (506A) A. Yes, sir.

Q. But notwithstanding that you don't know how much money Mr. Rutkin put into this hotel? A. I wouldn't know, no, sir.

Q. You wouldn't know at all? A. No, sir, I don't. The hotel wasn't bought, it was a leased hotel, it was over a period of time, so much for this and so much for that.

Q. You don't know how much he put in it all? A. No, sir, not actually.

Q. You can't give us any idea at all? A. Well, I would say maybe a hundred thousand, maybe fifty thousand, maybe a hundred and fifty thousand.

Q. Maybe a million? A. No, it couldn't have been that because it was only leased.

Q. It may have run from fifty to a hundred and fifty thousand? A. Possibly, yes, it could have run that high. We had alterations.

Q. Was that money, from fifty to a hundred and fifty thousand, put in in the beginning? A. No, I don't think so.

Q. Did Mr. Rutkin have that money in his possession at the time? (507) A. I don't know, I don't know that.

Q. Well, how was the money put into this hotel? You were in it? A. Well, my lawyers handled my end and his lawyers and Mr. Rutkin and Mr. Reinfeld handled theirs.

Q. Yes, but you must have consulted with your lawyers, did you not? A. I did, yes.

Q. And did you ask how much money Rutkin put into this? A. I don't know; at the time it was handled I must have. I don't remember.

William Harrison Dempsey—for Defendant—Cross

Q. Do you have any records? A. We had records but I haven't got them because Mr. Reinfeld's accountant had the records.

Q. And you never discussed with Mr. Reinfeld how much money was put in here? A. No, I didn't.

Q. At no time? Well, I knew at the time there were certain monies to be set up but I don't remember what the discussion was.

Q. And was Rutkin financing this whole thing? A. Well, he had a couple of partners, as I understand it.

Q. Who were the partners? A. Well, he had Benny Gaines—after he bought it—and Mr. Reinfeld.

(508) Q. Well, where did Mr. Rutkin get this money, this fifty to a hundred and fifty thousand, to put into it? That is what I want to know. A. I don't know.

. . . . .

Q. Do you know if he put this money in by check or by cash? A. I wouldn't know, sir.

Q. You would not know that. Then you can't say whether or not he put anything in, isn't that so, Mr. Dempsey? A. Well, I knew all the bills were paid, and I know I never had any trouble with him.

The Court: You didn't put it up?

The Witness: No, sir, but someone put it up.

Q. Someone put it up. Did he tell you he was going to borrow any money from Mr. Reinfeld, Rutkin? A. I don't think he did.

Q. You don't think he did. Did he tell you at any time that he had borrowed any money from Reinfeld to put into this hotel? A. He told me Mr. Reinfeld would be responsible for anything he was in.

Q. Regardless of what it was? (509) A. (Continuing.) Up to five years.

Q. Up to five years. And regardless of the amount? A. Yes, sir.

Q. And you could have gone in for five million, is that right, in that hotel?

* * *

Q. You featured the Dempsey Whiskey, did you not? A. Yes, sir.

Q. (Continuing) At the hotel? This was a leasehold, wasn't it? It wasn't an outright purchase? A. A lease, lease, that's right.

Q. You leased the hotel? A. That's right.

Q. What was this whiskey called? It was named after you? A. Well, that wasn't at the time we had the hotel, my whiskey came afterwards.

Q. How long after, sir? A. Well, I would say maybe a year afterwards; but we were pushing Wilson, White Horse, and I think there was some other whiskey there.

Q. Weren't you featuring the Dempsey Whiskey down at this Dempsey-Vanderbilt Hotel at that time? A. Not necessarily, no, that was handled by McKesson & Robbins; but we sold it there.

(510) Q. It was sold there? A. We sold it, yes.

Q. And wasn't it Rutkin who sold you the idea to feature this Dempsey Whiskey? A. No, sir.

Q. Who sold you the idea? A. Mr. Rutkin never had nothing whatever to do with it.

Q. Nothing whatever to do with it? A. No, sir.

Q. Did he ever tell you he got a $25,000 commission from McKesson & Robbins for selling you the idea of— A. No, sir.

Q. Please. —of using your name in connection with McKesson & Robbins Whiskey and calling it Dempsey Whiskey? A. No, sir.

Q. Never told you that? A. No, sir.

Q. Did you ever hear that? A. No, sir.

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(511) Q. Did you have any conversation with him concerning the fact that this whiskey, this Dempsey whiskey, was green whiskey and you shouldn't handle it? A. I think he did tell me once the whiskey was no good.

* * * *

Q. Did you know Mr. Owen of McKesson & Robbins? A. Yes, sir.

Q. Did you talk with him personally? A. Mr. Rutkin introduced me to Mr. Owen.

Q. Yes. And it was following that introduction, wasn't it, that arrangements were made to sell this whiskey? A. After that, yes, sir.

Q. Yes. So it was really through Rutkin that this whiskey was obtained by McKesson & Robbins? A. No, they really didn't go into it, some other people got mixed up into it. I understood that Mr. Rosenstiel and they went into partners on this, Rosenstiel and (512) McKesson & Robbins. It wasn't a deal that I know anything about or that Mr. Rutkin had anything to do with at all.

Q. He didn't have anything to do with it at all? A. As far as to the best of my knowledge, no, sir.

The Court: Did he introduce you to McKesson & Robbins?

The Witness: Yes, sir, to Mr. Owen. The President, Mr. Coster, was the man that I dealt with.

Q. And Mr. Rutkin never divided up with you any $25,000 commission? A. I never had any business with Mr. Rutkin except on the hotel.

Q. On the hotel, right? A. Yes, sir.

The Court: You never had any business with him before that?

The Witness: No, sir.

The Court: How did you run into him?

The Witness: Well, I had a restaurant and he used to come around to the restaurant and I would see him at the fights, and I think I met him maybe through Jimmy Johnson, the fight promoter. He was always around the fights, a sporting man. I had a restaurant, everybody comes in and they go and you meet a lot of people.

Q. Did he suggest to you that, on the occasion of this first (513) or second or third meeting that he was going to open up a string of hotels around the country and name them— A. They wanted to open up hotels and restaurants and bars and things like that.

The Court: Who were they?

The Witness: Mr. Reinfeld and Mr. Rutkin, as far as I know. That is who I was dealing with.

Q. And Mr. Reinfeld told you he wanted to open up a series of hotels? A. That was my impression.

The Court: Who was it that discussed with you first the question of opening a series of hotels and restaurants?

The Witness: Mr. Rutkin.

The Court: Rutkin.

Q. And did he say that he would like to use your name, "We can make some money"? A. Well, naturally I am a business man and I was going along (514) with him, if I could make some money I was happy, too.

Q. Someone else put up the money in this case? A. Not always; if it was a good proposition we had money to put up, too.

Q. Yes, I see. Did you ever ask Rutkin for an accounting of the money that he put up, Mr. Dempsey? A. I saw

the books down there, yes. I never asked him for any accounting because I knew it didn't make any money.

Q. It didn't make any money? A. No, sir.

Q. And how long was Rutkin in it? A. Well, I would say a couple of years before he sold out; maybe longer. At least a couple of years.

Q. To whom did he sell out? A. I think he sold out to man named Benny Gaines.

Q. Do you know how much Benny Gaines paid Rutkin for his interest? A. No, sir, I wouldn't know.

Q. You don't know that? A. No, sir.

Q. Did you ever ask Rutkin? A. I wasn't interested.

Q. You weren't at all interested? A. No, sir, because I didn't make any money and I know he (515) didn't make any either. I know he lost money.

Q. You lost money? A. Yes, sir.

Q. Do you know whether Reinfeld was called upon to pay any bills during this time? A. Well, at the time that he got out, I think we owed a little money for current bills, but very little.

Q. Very little. Who paid that? A. I wouldn't know.

Q. Did you ever have any discussion with Reinfeld—strike it out—any discussion with Rutkin concerning the operation of the hotel? A. We talked several times about different things.

Q. And he never told you anything about the money that was being put in and the money that was going out? A. Well, I knew we were losing money right along.

Q. Right along. Was Rutkin in charge of the bar? A. No, sir.

Q. Well, what did he do around the hotel? A. Well, he was a hand shaker; he didn't do anything.

The Court: I don't think that makes any difference.

A. (Continuing.) He didn't do anything. He was one of the owners.

Q. He didn't do anything. He was one of the owners? (516) A. Yes, sir.

Q. I don't know whether I asked you this question, Mr. Dempsey: Did he ever get any kind of a writing from Mr. Reinfeld? A. Writing?

Q. Any kind of a writing. A. Well, I had a contract,

Q. You had a contract; with Mr. Reinfeld? A. No, I had nothing with Mr. Reinfeld it was a corporation.

Q. It was a corporation. But you didn't get any kind of a writing from Mr. Reinfeld saying he would guaranty the bills or debts or anything else? A. No, sir.

The Court: Who suggested the association between you and Rutkin first? Was it Rutkin or you?

The Witness: I think, Judge, that Mr. Rutkin came to me.

The Court: Your name was well known, a valuable name.

The Witness: We thought it was until we opened the hotel and didn't make any money.

The Court: Well, that might have been due to other unfortunate circumstances.

The Witness: I think so, too, that's right.

Q. One or two more questions. How long did you stay in it, (517) Mr. Dempsey?

The Court: What difference does it make?

A. A couple of years. I didn't want to be associated with a flop so I got out of it, too.

Q. You got out of it too.

The Court: Do they sell Dempsey Whiskey yet?

The Witness: No, thank God, they got rid of that too.

The Court: One punch and you're out.

The Witness: Yes, sir. It was a mistake and I am glad I got away from it.

Q. Neither you nor Rutkin got any money from out of that venture? A. No, sir, I don't think so.

Q. (Continuing.) If you know, Mr. Dempsey—

Mr. Van Riper: Now, wait a minute. The question is neither you nor Rutkin got any money out of the venture; now, if he is talking about a profit, that is one thing, but if he is talking about Rutkin getting any money back, that is another.

The Court: What are you talking about, profits out of the Dempsey-Vanderbilt?

Mr. Tyne: Yes, sir.

A. I don't know. I would say no, I would presume he didn't.

(318) Q. There was no profit. How about capital investment? A. No, we never got nothing back.

Q. You never got anything back, neither you nor Rutkin? A. Not as far as I know.

Mr. Tyne: That's all, Mr. Dempsey.

Mr. Van Riper: Now, Mr. Dempsey, that makes me ask one more question. You don't know what arrangement was made between Mr. Gaines and Mr. Rutkin when Mr. Gaines took over the Rutkin interest, do you?

A. No, sir, I didn't know about that; I had my share and he had his.

By Mr. Tyne:

Q. You didn't think it was necessary to have any conversation or discussion with Rutkin at the time Gaines

took over? A. Well, Rutkin could do what he wanted to with his stock and I could do what I wanted to with mine, and I guess I wanted to get out, and I did.

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(Witness excused.)

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(519) MILLARD BENNETT, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Bennett, where do you live, please? A. 5 East 73rd Street, New York City.

Q. And your business is what, sir? A. Sales training.

Q. You mean you are in business for yourself? A. Yes.

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Q. Do you know Mr. Rutkin, the defendant here? A. Yes.

Q. Do you know Mr. Reinfeld, Joseph R. Reinfeld? A. Yes.

Q. Now, were you associated with the Browne Vintners Company at one time? A. Yes, sir.

Q. In what capacity, sir? A. I started with the company as national sales director and I think about six months later I was vice-president.

Q. Vice-president in charge of any particular branch of (520) activity? A. Vice-president—it said on my card vice-president, national sales director and public relations director.

The Court: Well, what were you, actually, no matter what it said on your card.

The Witness: Well, I was national sales director, sir.

Q. Meaning that you had the right to direct— A. Meaning that I went around the United States and met distributors, talked at meetings, talked to salesmen, and generally promoted the sale of the product.

Q. I see. Now, can you tell us, Mr. Bennett, during what years you were associated with Browne Vintners? A. I started with the company in February, 1937, and left in March, 1941.

Q. Do you recall the first time that you met Mr. Rutkin? A. Yes.

Q. Who introduced you to him? A. Mr. Reinfeld and I went somewhere over in Jersey. We were leaving the office and Mr. Reinfeld introduced me to Mr. Rutkin.

Q. Now, can you tell us the conversation that took place at the time that Reinfeld introduced you to Rutkin?

* * *

A. He just said "this is Mr. Rutkin".

(521) * * *

Q. Can you tell us about what year it was? A. I think it was the fall of 1937. Now expecting to be called here, sir, I didn't have any definite dates in my mind.

* * *

Q. Now, can you give us your best recollection of what the conversation was, the manner in which Reinfeld introduced you to Rutkin? A. Well, he just said, "This is Mr. Rutkin", and we went out and got in the car.

Q. Now, did you have a conversation in the car? A. We were riding along and I recall that we were talking in the car about business, and Mr. Reinfeld—I sort of maybe was not so open as I should be and Mr. Reinfeld

said that I need have no secrets from Mr. Rutkin, I could speak freely, that Mr. Rutkin was his partner. I recall that.

Q. That Mr. Rutkin was a partner? A. Yes.

Q. Now, then, did you at one time while you were vice-president in charge of sales of this promotional work, visit Chicago and see Mr. Rutkin there? A. Yes.

(522) Q. And what kind of work was Mr. Rutkin doing in Chicago? A. Frankly, it was in promotion, but both Mr. Lasky, the Chicago manager, and Mr. Rutkin, didn't take me into their confidence, and I came back and talked to Mr. Lentz, the vicepresident, about it, because I felt that I should know what was going on.

Q. Well, Mr. Rutkin, I take it from your testimony, was doing promotional work in Chicago; and was that under your general, or should it have been under your general supervision? A. I thought so, yes, sir.

Q. Had you been advised that Mr. Rutkin was going to be put on at the Chicago office? A. No.

Q. Now, then, did you see Mr. Rutkin in another city? A. Yes.

Q. Doing the same kind of work? A. In Boston.

Q. In what other city did you see him? A. In Boston.

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Q. What kind of work was he doing in Boston? A. Well, I just know that he was in Boston with Mr. Timello, (523) and I didn't have any part of it.

Q. And who is Mr. Timello? A. The manager in Boston.

Q. The Browne Vintners' manager? A. Yes.

Q. In Boston? A. Yes.

Q. Oh, I see. And had you been advised by Browne Vintners that Mr. Rutkin was going to do anything in Boston? A. No.

Q. For Browne Vintners? A. In a general way, when I talked to Mr. Lentz about it, he said—

Mr. Tyne: No, I object to any talk.

Q. No, never mind the conversation. A. All right.

Q. Now, then, this is I suppose when you were in the Browne Vintners' offices frequently yourself? A. Yes.

Q. Did you see Mr. Rutkin in the Browne Vintners' offices? A. Yes.

Q. Whereabouts in the Browne Vintners' offices have you seen him? A. I saw him in the cocktail lounge; I saw him in Mr. Lentz' office and I saw him talking to Mr. Reinfeld.

(524) Mr. Van Riper: Cross examine.

Cross examination by Mr. Tyne:

Q. When was it you saw him in Boston, saw Rutkin in Boston, Mr. Bennett? A. Well, I think it was in 1938.

Q. It couldn't have been in 1939, could it? A. It could have, yes. Yes, it could.

Q. What part of the year was it, did you say? A. Well, you see I wasn't making any records. It was traveling all over the country; I cannot answer you now in detail on the particular date.

The Court: Have you any recollection of the time?

The Witness: I know it was before 1939. That is when we were carrying on our promotion of Wilson whiskey. It was in the fall of '37—well, I am pretty sure it was in the spring of 1938 because at that particular time we were carrying on promotion in that area.

Q. Now, did Mr. Reinfeld work for Browne Vintners through 1939?

Millard Bennett—for Defendant—Cross

The Court: Mr. Rutkin, you mean?

Mr. Tyne: Mr. Rutkin, thank you, sir.

A. I cannot tell you anything about who Mr. Rutkin worked for. I didn't know—I didn't know he was on the payroll, all I know is I saw him.

(525) Q. You saw him; you didn't know he was on the payroll? A. He didn't report to me.

Q. He didn't report to you; you didn't know what his activities were in connection with the company, is that right? A. I say that he was doing promotion work; he was supposed to have known people around and he was working with our managers in these areas and they didn't report to me, I know that.

Q. You say you know he was doing promotion work and was working with your managers. What do you base that on, Mr. Bennett? A. I base that on the fact that when I came back and talked to the executive vice-president I said, how can I run a sales organization if people don't report to me? He told me it was a big country and to work somewhere else, a man named Saul Lasky.

Q. Well, what was there about it—was there any secret about it? A. I don't know.

Q. Did it strike your curiosity? A. Certainly.

Q. It was very strange and unusual, wasn't it? A. Certainly.

Q. You don't know what Rutkin was making? (526) A. No, sir.

Q. And so when you say that he was doing promotional work, you are just assuming that, isn't that so? A. I am not assuming it. If I am out in Chicago with our manager there and they tell me about the orders they are getting—

Q. All right, you are telling us how about what your Chicago manager said to you. Did you ever go out with Rutkin and do any promotional work? A. No, sir.

Q. In Chicago? A. Nowhere.

Q. Or Boston—nowhere? A. No, sir.

Q. So of your own knowledge you don't know what he did? A. No, sir.

Q. You know he only continued on the payroll at $15,000 for a period of six or seven months? A. I wouldn't know whether he got 15,000 or 115,000. I wouldn't know.

Q. You know that in 1939 he went before the District Court in Boston, do you? A. No, sir.

Q. On a criminal charge? A. No, sir.

(527) Q. You don't know that. You were there until 1941? A. Yes, sir.

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MORRIS KANENGISER, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Kanengiser, where do you live, sir? A. 105 Hansbury Avenue, Newark.

Q. What business are you now engaged in? A. Real estate business.

Q. You know James Rutkin? A. I do.

Q. You know Joseph H. Reinfeld? A. I do.

Q. And you have known them both for how long? A. I would say for the past—Mr. Rutkin I probably know for the past twenty years and Mr. Reinfeld much longer.

Q. You knew Reinfeld first? A. Yes.

Q. Now, were you interested in a combination that Reinfeld and Rutkin were members of back in 1928 or '29? A. I was.

Q. Do you remember when Rutkin came into that combination? (528) A. I don't exactly—

Q. I don't mean the exact date; do you remember the time he came in? A. Somewhere in 1930 or '31.

Morris Kanengiser—for Defendant—Direct

Q. But you remember the occasion when Rutkin came in? A. I do.

Q. He didn't come in at the start, did he? A. No, sir.

Q. Now, do you remember who brought Rutkin in? A. Well, as I remember Mr. Reinfeld brought him in.

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Q. Did Mr. Rutkin acquire an interest in the combination? A. I think he did.

Q. And what percentage, Mr. Kanengiser? A. Well, I don't remember the exact percentage at that time but later on I do.

Q. What was his percentage later on? A. As I saw some papers, it came to my recollection he had 12 percent.

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The Court: Yes; when did you learn that he had (529) 12 percent?

The Witness: Well, a few years before the close of the business, before the legalization of liquor, I would say four or five years prior to that.

Mr. Tyne: Four or five years prior to—

The Court: 1929?

The Witness: Yes, it would be about 1929, '28 or '29, about.

Q. Mr. Kanengiser, I show you a paper, referring to the original, photostatic copy of which has been marked D-9 for identification which we had the other day, and ask you if you have seen that paper before? A. I did.

The Court: Speak up so that the jury can hear you.

A. (Continuing) This is my handwriting.

Q. I call your attention to some writing in longhand in ink apparently on the lower right-hand corner of the paper

and ask you whose handwriting that is. (530) A. It is my handwriting.

Q. Now, will you tell me from whom you received that paper? A. I received it in Sam Cohen's office.

Q. And Sam Cohen was an accountant; is that the accountant you are talking about? A. Yes, he was the accountant for Browne Vintners and he straightened out the matter.

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Q. Do you know whether he was the accountant or not? A. I didn't know whether he was or not.

Q. All right. Now, then, did you give this paper—to whom did you give this paper? A. I gave it to Mr. Rutkin.

Q. You gave it to Mr. Rutkin with that writing on there that you have described as your handwriting? A. That's right.

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Q. Mr. Kanengiser, looking at this statement, are you now familiar with the contents of it and what it means? A. Yes, I am.

(531) Q. Now, then, I call your attention to this word on the statement, "Sam Ltz." Who does that refer to?

Mr. Tyne: I object, if the Court please.

The Court: On what ground?

Mr. Tyne: The paper is not in evidence, hasn't been specifically identified and counsel is trying to get in—

The Court: Well, he has said he received this in Sam Cohen's office and that Cohen was the accountant for Reinfeld and that these figures on here are in his handwriting. I will allow it.

Mr. Tyne: He hasn't testified that he was the accountant for Mr. Reinfeld.

The Witness: He was the accountant for Browne Vintners.

Q. What does "Sam Ltz." stand for? A. It would be Sam Lentz.

Q. And what does "JW" stand for? A. Jim Wilson.

Q. And what does "Lou S" stand for? A. Lou Susskind.

Q. What does "Cosky" stand for? A. There was a group, the members were named Cosky.

Q. What does the initial "K" stand for? A. That was myself.

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(532) Q. What do the initials "JF" stand for? A. Joseph Facher.

Q. And was Joseph Facher a partner? A. Yes.

Q. What do the initials "MS" stand for? A. Martin Schneider.

Q. And was he a partner? A. He was.

Q. What do the initials "JR" stand for? A. Joseph Reinfeld.

Q. And was he a partner?

The Court: Where did you get this statement?

The Witness: I suppose—

Q. No, don't suppose.

The Witness: I was in Mr. Cohen's office trying to get the figures straightened out and Mr. Cohen had asked me to put down the percentage on the paper.

The Court: When?

The Witness: I don't remember the exact date or year.

The Court: 1925, '26, '27, '28?

The Witness: No, it was around '37 or '39.

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(533) Q. Mr. Kanengiser, without regard to the year in which you got it, do you know the event by which you got

it. Can you connect it up with the event or something happening? A. Well, I had a certain investment there myself and I asked—

The Court: Investment where?

The Witness: I was supposed to have an investment in Browne Vintners.

The Court: All right. Now what was this listing of percentages and monies for?

The Witness: Well, it was listed, my percentage or whatever money was owing to make it an even amount, and my even amount after paying a certain amount which was due to make up $20,000, which I paid by check to Mr. Reinfeld.

* * *

Q. Did you know anything about the capitalization of Browne Vintners, the amount of capital stock they had? A. Well, at the close of what I call our combine, we had an amount of about $469,000 and we were supposed—

The Court: What was the supposed combine?

The Witness: Well, our group, our association.

(534) The Court: You mean the bootleg group before prohibition went out?

The Witness: Yes, sir.

Q. You had about $469,000? A. Yes.

Q. Now, did that go to Browne Vintners, the capital? A. That went to Browne Vintners.

Q. Now, was there a time when the capital was increased to a million dollars?

Mr. Tyne: I object to the leading question.

The Court: Well, we have been over it before.

A. I was called up—

The Court: Was there a time when it was increased to a million dollars, yes or no?

The Witness: It was.

Q. And at that time did you have to put up some extra money yourself? A. Yes.

Q. Did you put up some extra money yourself? A. I only put up to the amount of $20,000.

Q. Yes, but when the capital was increased to the million dollars, did you put in some cash yourself? A. No, I didn't have the money. I didn't have enough money; I didn't.

Q. Now, Mr. Kanengiser, I ask you to look at this statement (535) and particularly call your attention to the figures opposite K, which you say stands for you. A. Yes.

Q. And I call your attention to the fact that it says "K-4 percent of $469,000, $18,773.74." A. Yes.

Q. Is that correct? A. That's right.

Q. Now, what did that represent? A. Well, that represented the part of the money which is up here, the $469,000.

Q. And whose 4% was that, yours? A. Mine.

Q. I call your attention to the fact that directly under that there is the word "Cash," $1226.26. What does that mean? A. That I had to pay, the difference to make up the $20,000.

Q. Well, then, to get back to the question we had a minute ago, Mr. Kanengiser, did you pay some cash? A. That twelve hundred and—

Q. You paid $1226.26?

The Court: Well, that wasn't the question at all. You asked if he paid any cash at the time the capitalization was increased. This was not to increase the capitalization, (536) as I understand it.

Mr. Van Riper: I beg your Honor's pardon. That's exactly what we are going to show, that it was, sir.

The Court: Well, it is not what he has testified to.

Q. Now, Mr. Kanengiser, what was the purpose of your putting in more money, $1226? A. To make up the amount of $20,000.

The Court: Was that money that you put in or money you were getting out?

The Witness: Money that I put in.

The Court: Money you put in. You put in the $1200 to make it $20,000.

The Witness: To make it $20,000.

The Court: Well, what was the purpose of that?

The Witness: To have a certain—to have that 12%, which figured out $20,000.

The Court: 12% of what?

The Witness: 12% of the half a million dollars—of the million dollars.

Q. Well, 20 would be 4% of a half million, wouldn't it?

The Witness: Of a half a million, yes.

Q. Yes.

The Court: Well, what is 12%. Why are you talking about 12%?

(537) The Witness: I didn't have 12%.

The Court: What was the 12% that you speak about?

The Witness: That Mr. Rutkin had?

The Court: No, you just said—

The Witness: Oh, $1200.

The Court: $1200.

The Witness: $1200.

The Court: Not 12%

The Witness: $1200.

Q. Now, Mr. Kanengiser, what we want to get clear is, if you will tell us, please, why was more money put in, why did you bring up your share up to twenty million—or $20,000? What were they doing? A. Just to make it an even amount, to bring enough money for the operation of Browne Vintners.

Q. Well, were they increasing the capital at that time? A. Not just—it was to make up the half a million dollars.

Q. Yes. A. If that's what you mean.

Q. Well, what was to be done with the half a million? Was it to go into Browne Vintners? A. It was to go into Browne Vintners.

Q. Yes. And refreshing your memory from looking at this sheet, you testified a moment ago that the original capital was $469,000? A. Yes.

• • •

(538) Q. Then I ask you—I call your attention to this figure on a paper, original $469,343.40. That's what you just told us about? A. Yes.

Q. Right? A. Yes.

• • •

Q. Will you explain the rest of those figures in that Browne Vintners there? A. Well, this figure, the $469,000, that was money left over from our combine, the difference to go into Browne Vintners, but to make up a flat amount, or an even amount, to make it up to a half a million dollars. So I had put in my proportionate share of twelve hundred and some odd dollars.

Q. But getting back to this, you start with the 469; now (539) tell us what's the next figure under that, will you please, and the next? A. Well, the next figure, J.R., which would mean Joseph Reinfeld, and—

Q. How much, how much? A. $269,328.30.

Q. All right. And the next figure under that, the next line. A. The next line is A., initialed A., $217,569.20.

Q. Now, in your combination whom did A represent? A. A would mean Abe.

Q. And Abe is who? A. Abe Zwillman.

Q. Abe Zwillman. All right. Then what's the next one? A. And J.D., that would mean Joseph Davis.

Q. Yes. A. $39,799.25.

Q. And what's the next one? A. M.L.

Q. And who is that? A. That would be Marty Lehrhoff.

Q. And what are the figures? A. $7959.85.

Q. And what does it all total up to? A. That totals up to one million dollars.

(540) Q. One million dollars. A. Yes.

Q. Now then, with that in mind does that refresh your memory as to whether or not that was the time that the capital was raised from 469 to a million? A. That's right.

Q. Yes. And was that the reason—

* * *

The Court: You tell us what this document is, if you know what it is.

The Witness: This is a document or a paper that was prepared in Mr. Cohen's office and it was to be a million dollars capital into Browne Vintners.

The Court: When?

The Witness: Well, I would say it was in '37 or later or about, '36—

The Court: When it was first founded?

The Witness: When it was first founded.

The Court: When the Browne Vintners was first founded?

The Witness: Well, probably before '36, because Browne Vintners was founded in '34.

(541) The Court: Well, when was this arrangement made?

The Witness: Well, I don't recall. Well, this was at that time, I suppose. I haven't got the dates or I didn't prepare any dates. I just thought I would forget about this whole thing.

The Court: Was this million dollars put in when Browne Vintners was first organized?

The Witness: No, it was just a half a million dollars.

The Court: Half a million dollars.

The Witness: Yes, sir.

The Court: When it was first organized.

The Witness: When it was first organized.

The Court: When was the other half a million dollars put in?

The Witness: Well, I was called upon, as I recall, for more money but I didn't have enough money, so I said I cannot advance any more, and I just stayed there with that $20,000.

Mr. Van Riper: Has your Honor finished?

The Court: No, I have not.

Mr. Van Riper: I am sorry.

The Court: I still don't know what that $20,000 is.

The Witness: The $20,000 was my percentage of the half a million dollars.

(542) The Court: It was your percentage—

The Witness: 12%.

The Court: —of the money left in the bootlegging combine.

The Witness: That is correct.

The Court: Is that what you mean?

The Witness: That is correct.

The Court: Now you are sure about that.

The Witness: Definitely.

The Court: Definitely.

The Witness: Yes.

The Court: And then all of these other figures at the bottom of the page are the proportions of the money of the bootlegging combine, is that right?

The Witness: That is right.

The Court: And the money in the bootlegging combine was $469,343.40.

The Witness: That is correct.

The Court: And the extra $31,000, which made the half million—how was that secured?

The Witness: Oh, the additional money? That was paid in—

The Court: Well, you say there was $469,343.40 which was left from the bootlegging combine.

The Witness: The bootlegging combine, yes.

(543) The Court: Now then, to the right of the list of names are various sums of money which total up to $500,000.

The Witness: That's right.

The Court: All right.

The Witness: I had to pay the difference to make up my percentage of $20,000.

The Court: You had to pay up $1226, is that right?

The Witness: $1226.26.

The Court: Well, what happened to all the rest of this $469,000?

The Witness: Well, that made up a half million dollars that went into—for the organization, or working capital as you would call it, into Browne Vintners.

The Court: When did that go in?

The Witness: Well, that was at the beginning of the founding of Browne Vintners.

The Court: Half a million dollars?

The Witness: Yes, sir.

The Court: The $469,000 plus $31,000 more?

The Witness: Yes, sir.

The Court: That was turned into Browne Vintners when Browne Vintners was organized?

The Witness: That is correct.

(544) The Court: You are sure about that?

The Witness: Yes, sir.

The Court: Now where did the other half a million come—what's this million dollars.

The Witness: Well then, there was a proposal made to get more money up or that there was more money needed for the operation of the company—

The Court: And then—

The Witness: I was called upon, I recall, for more money but I didn't put up any more money.

The Court: Reinfeld, Zwillman, Davis and Lehr—what's his name?

Mr. Van Riper: Lehrhoff.

The Court: Lehrhoff, put up the other $500,000?

The Witness: Well, I wouldn't know who really put up or who didn't.

The Court: Well, you just said a minute ago that Reinfeld, that J. R. Reinfeld, and that the A. was Zwillman and J. D. was Davis.

The Witness: Well, I don't know whether they put up the money or not. I wasn't present when they put it up, or I had nothing to do with that.

Mr. Van Riper: If your Honor please, I dislike very much to interrupt your Honor, your Honor is being very helpful in getting out this information, but the witness (545) did not say that Reinfeld the $260,000. He said that was the amount opposite Reinfeld's name. And the reason I call that to the Court's attention is because that goes to one of the very vital points.

The Court: He said it was increased to a million dollars.

Mr. Van Riper: That's right.

The Court: The capitalization was increased to a million dollars, is that right?

The Witness: Well, I was called upon—

The Court: No, do you know whether it was increased to a million dollars?

The Witness: I think it was.

The Court: All right. All right, Mr. Van Riper.

Mr. Van Riper: Thank you, sir.

Q. Now, Mr. Kanengiser, I just want to see if we can't clarify one thing. I call your attention to this. As I recall it, you said in answer to Judge Meaney's question a minute ago that the $20,000 opposite your name represented what you had left over from the old combine. A. That is correct.

Q. Now, will you look at that sheet again, please, and tell us whether or not you mean to say that, that the whole 20,000 was left over from the old combine? A. Well, that was not the whole 20,000, that was here, the (546) 18,000, and whatever the figures are here.

Q. 18,800 and some odd dollars, is that right? A. Yes, yes; eighteen thousand seven seventy three; and then I had—I put up $1226.26, to make it $20,000.

Q. That's right. Now several times you had said that you were called on for more money and you didn't want to put up any more, but you did put up $1226, did you not? A. Yes, I did.

Q. And—

The Court: That was put up for the first five hundred thousand went in to found Browne Vintners.

The Witness: That is correct.

Q. Well, now, I don't want to contradict that but I want to ask you again, please: You just said that the first five

hundred thousand—you mean the first five hundred thousand was really four hundred and sixty-nine thousand? A. Sure.

Q. Right. Now, did you put up the $1200 to make up the $469,000, or did you put up the $1200 to make up the million?

Mr. Tyne: Of course, I object to that if the court please, the witness—

The Court: He has already testified, testified three different times, that he put it up to make $500,000.

Mr. Van Riper: All right. I'm sure that the (547) Court wants in this situation only to get the fact.

The Court: I want to get the fact, exactly.

Mr. Van Riper: Yes. And it is apparent, sir, from looking at the statement itself, and nothing else, that the witness is confused as to that answer, and that's the reason I want to straighten it out.

Q. Now, Mr. Kanengiser, the company started, the Browne Vintners started, with $469,000, in round figures; right? A. Yes.

Q. What percentage did you have of that? A. 12%, according to the figures.

Q. 12%. And how much did that amount to in dollars? A. Well, it is $20,000.

The Court: $18,773.74.

A. $18,000—

Q. Well, that's your trouble, Mr. Kanengiser. How much did your 4% amount to? A. Well, are you figuring out the 469,000 or are you figuring 4% of a million?

Q. No, 4% of 469,000 amounts to how much? A. $18,773.74.

Q. All right. Now, does that represent the amount that you had in Browne Vintners at the start, eighteen thousand seven hundred and something? A. That does.

(548) Q. Right? A. That is right, yes.

Q. Now then, what does the $1226 represent? A. Well, that represents the additional payment to make up $20,000.

Q. To make up 20,000. And when you had $20,000 made up and these other figures were made up, what was the capital of Browne Vintners? A. When I had the $20,000, it was just a half a million dollars.

Q. Well, was the half a million the total capital of Browne Vintners or was that something else? A. It was just the total capital at that time. I mean at the time when the Browne Vintners Company was founded.

* * *

Q. Mr. Kanengiser, when Browne Vintners was founded what was the capital?

* * *

(549) A. Well, isn't it $469,343.40?

Q. All right. Now just keep that in mind, will you please? A. All right.

Q. Four hundred and sixty nine thousand. Now then you have said that the capital was increased. A. It was increased to a half a million at that time.

Q Now, I ask you to look at this sheet and look at these figures that make up a half a million dollars, down at the bottom here. A. Yes.

Q. And look at the names opposite. Does that cover all of the people who were in Browne Vintners?

* * *

A. What is the question?

Q. Wait a minute. I will try to give it simply. Will you look at these names here— A. Yes.

Q. —opposite these figures? Look at them all? A. Yes.

(550) Q. Now, having those in mind are those all of the people whom you knew to be in Browne Vintners? A. Yes, those are the people whom I knew to be in Browne Vintners.

Q. Were there other people in Browne Vintners, Mr. Kanengiser? A. Not to my knowledge.

Q. What does this A represent up here? A. A would be Abe, Abe Zwillman, as I said before.

* * *

Q. Mr. Kanengiser, did Zwillman have any part of the $469,000? A. Well, according to the sheet he had.

* * *

(551) Q. Were there two or three groups in this combine? A. Well, there was our group and—yes, there was two groups.

Q. Who were they? A. There was Abe Zwillman's group and my group with the Reinfeld family.

Q. You were merged with the Reinfeld family, were you? A. Yes, yes.

Q. And then there was the Zwillman group besides that? A. That's right.

Q. Now, was it those two groups, the Reinfeld group and the Zwillman group, that went out of the old combine and went into Browne Vintners? A. That is correct, yes.

Q. Now then, when they started Browne Vintners with those two groups how much was their capital? A. Well, this was the capital (indicating) $469,343.40.

Q. All right, $469,000. Now then, when that started how much of it did you have, of that 469,000. A. Well, I said it so many times here—the 18,773.74.

Q. Which represented 4%? A. Represented 4%.

Q. Then, did you increase your capital holdings by putting in some cash? A. Twelve hundred some odd dollars.

(552) Q. Then when you put in $1200, $1200 in round figures, you had $20,000 interest, did you not? A. Yes, sir.

Q. And you say that was 4% of a half million? A. Yes, sir.

Q. And that's this half million here on the paper that you are referring to, is it not? A. Yes, yes.

Q. You are not talking about the 469,000 up here (indicating)?

* * *

A. This 469 plus whatever it was added up made the half million.

Q. Exactly, exactly.

The Court: $31,000.

The Witness: That's right.

Q. Plus, plus—now, does this 500,000 down here at the bottom, opposite the names that we have just mentioned—does that represent the investment of a group? A. That represents the investment of our—of my group, call it my group, and the Reinfeld group.

Q. Your group and the Reinfeld group? A. Yes.

Q. That hasn't anything to do—that hasn't anything to do with the investment of the Zwillman group? A. No.

(553) Q. Or of Davis personally? A. No.

Q. Or of Marty Lehrhoff? A. No.

Q. Is that right? A. That's right.

Q. All right. I think we have probably made some headway in straightening that out now.

Now, at this time, when the capitalization was a million dollars, you had a $20,000 interest, is that right? A. When the capitalization—

Q. Became a million? A. Well, if it figures out, then I had $20,000.

The Court: You put no more money in.

The Witness: No, I did not.

Q. After the 1200. A. No.

Q. So that you had 4% of a half million or 2% of a million. A. Well, it would figure that, yes.

Q. Is that right? A. That's right, yes.

Q. That's the way it figures out. Now, was Mr. Facher a partner also? A. He was.

Q. By the way, who did you give your $1226 to? (554) A. I gave it to Mr. Reinfeld.

Q. Mr. Reinfeld personally? A. Yes.

Q. Now then, did you get any stock from Browne Vintners? A. No, I did not.

Q. Were you supposed to have any stock?

Mr. Tyne: I object to this line of questioning, if the Court please.

Q. Well, what were you supposed to have for your $20,000?

Mr. Tyne: I object to that he was supposed to have.

The Court: No. I mean he put it in. We want to find out of he had any—did you have any receipt or anything?

The Witness: I had no receipt. It was all—

The Court: Did somebody front for you?

The Witness: I wouldn't know just who fronted for me.

The Court: But somebody did front for you.

The Witness: But somebody did front for me.

The Court: All right.

Q. Now, who told you that someone would front for you? A. Well, it was common knowledge. It was like Cohen's office or Mr. Reinfeld's office—

* * *

(555) The Court: Did anybody tell you?

The Witness: Well, Mr. Reinfeld would tell me that, or Mr. Cohen, in the office. We used to go to his office mostly.

The Court: Why did you have to be fronted for?

The Witness: Well, the company was formed and it was not—well, I would say, probably, it was in the bootlegging days and we were not clear whether we should have been open and above board.

Q. Now then, did you ever talk with Mr. Reinfeld about your stock? A. I did.

Q. Yes. And what did he tell you about it? A. Well, it is being fronted by some person and it will be there whenever the time comes.

Q. Now then, did a time come when you borrowed some money from Mr. Reinfeld? A. Yes, I borrowed some money from Mr. Reinfeld.

Q. Do you know about when that was? A. That was '41 or '42.

Q. And how much did you borrow from him? A. $10,000.

Q. And he had a conversation with you then about your stock? Did he say something to you about your stock? A. Well, I was short in money and I said to Mr. Reinfeld, (556) I am short in money now, I have been doing some building," and I said, "You have all the stock and there is nothing that I have, and you surely can loan me $10,000," for which I gave him a note.

Q. You signed a note for him? A. I did.

Q. And what happened about that note? A. Well, about two years later Mr. Reinfeld instituted suit against

me and I had to pay the note less 5% interest, and I paid that note.

Q. And when the company was sold, when Browne Vintners was sold, did you get any money for your stock? A. No, I didn't get any.

Q. Nothing at all? A. No.

Q. Did you talk with Reinfeld about that? A. I did, and Mr. Reinfeld said most of the money was used for expenses and to pay certain people, and I didn't get any money.

Q. He said it was used for expenses and to pay certain people. A. Yes.

Q. You never got anything for your stock? A. No, I didn't get anything.

Q. Now, by the way, Mr. Kanengiser, we have lost the sight (557) of this. We started out to talk about your handwriting down here. You said that you put that on before you gave it to Rutkin; is that right? A. Yes.

Q. And what does that handwriting mean? What do those figures mean? A. Well, Mr. Cohen, must have asked me to—

The Court: No, no, no.

The Witness: He asked me to—

The Court: Well, do you remember this, or are you just supposing?

The Witness: I remember it, I remember it. He asked me "How are those percentages divided." And I knew it very well, so I—he asked me to put it down and I put it down.

Q. You were putting down, do I understand from that—you say you remember it pretty well; do you mean by that that you remembered what the percentages of each one had been in the combine, in the old combine? A. Yes.

Q. And did you mean that that's what they should have been here? A. That's what they should have been.

Q. Yes. Now then, I call your attention to this writing, "J. R.," 45%. What does that mean (558) A. Well, J. R.—

Mr. Tyne: Of course, I object to this line of questioning, as it were. This is strictly hearsay testimony and self-serving declarations and he is referring to a paper the authenticity of which has not been established.

Mr. Van Riper: Why, he is talking about his own handwriting.

Mr. Tyne: And it is a copy of that.

The Court: Are you contesting the—is that a copy?

Mr. Van Riper: This (indicating) is the original.

The Court: That's the original.

Mr. Van Riper: This may be a carbon copy but it has his original handwriting.

Mr. Tyne: It is a carbon copy.

The Court: It is a carbon copy.

Mr. Van Riper: But it has his handwriting.

The Court: That's the one you got from Cohen, is it, that copy.

The Witness: That is correct.

(559) Q. Now, the question is, Mr. Kanengiser, what does J. R. 45% mean? A. J. R. would mean Joseph Reinfeld and his family.

Q. What does Louis S. 6 mean? A. Louis Susskind 6%.

Q. What does James 12 mean? A. James Rutkin, 12%.

Q. What does Ed Co. 3 mean? A. That was Coste Company; Ed Coste, his name was; 3%.

Q. What does K Co. mean, 3—32½ mean? A. That was myself and my group.

Q. What does K Co. 1½ Chick's mean? A. Well, I bought out 1½% from a party by the name of—we used to call him Chick, or Chick Callahan, and that was for my group, that 1½%.

Q. Do I understand from that that you say you bought out Chick Callahan, that Chick Callahan has 1½% of what, the old combine? A. Of this here group, of this percentage.

Q. But in the old days in the combine, is that what he had? A. What do you mean by old days? A. Before Browne Vintners.

Q. Before Browne Vintners. A. Oh, yes, that's right.

Q. All right. And you bought Callahan's share? A. Yes.

* * *

(560) The Court: What percentage did you have of the old combine, you yourself?

The Witness: It was figured out 32½% for four people.

The Court: You yourself.

The Witness: Well, that would be 8 and a fraction, 8% and a fraction.

The Court: Well, on the other thing you were to get 4%.

The Witness: Well, 4% was changed into smaller figures because, a certain amount of money, 12% of 500,000 would figure out fifty—

The Court: 20,000. 4% of 500,000 would be 20,000.

The Witness: Yes.

The Court: But you say you had 32½%—or you had 8%.

The Witness: Well, this is 8% of—my group had 32½%.

The Court: Yes.

The Witness: It was 8¼.

The Court: Then you had 8¼%.

The Witness. It wasn't quite a quarter but—32½—

The Court: Well, an eighth, rather.

The Witness: Yes.

(561) The Court: 8 and an 8th percent.

* * *

The Court: You said you had 8 and an 8th%.

The Witness: That is correct.

The Court: And that the other included 4%.

The Witness: Well, the figures were changed, as bigger figures for money came along, so we didn't make a difference or—

The Court: It didn't make any difference whether you had 8 and an 8th% or 4%?

The Witness: Well, the money figures would be equivalent to the percentage. But, however, we had, our group had—it was a company of a hundred percent, and then it was changed in that way.

The Court: Changed in what way?

The Witness: Well, 12% of 500,000 would be equivalent—

The Court: But you had 8 and an 8th% of the money left from the bootlegging.

The Witness: Yes, yes.

The Court: That's more than $20,000.

Mr. Van Riper: If your Honor please, the witness (562) says he would like to recall.

Q. You mean you want to look at it and study it a minute? A. Well, I will put it this way: We had a hundred—

percent, so the new group came in and they brought out 50%, and out of our 50—

The Court: Brought out 50% of the 469,000?

The Witness: Of the hundred percent.

The Court: Of the 469,000?

The Witness: Well, I would assume it that way. Then we changed our 50% into a hundred percent. So that that's how we came to have the 32½%.

The Court: Well, that's as clear as mud but proceed.

Q. Well, Mr. Kanengiser, let's see if we can't get it straightened out, because the Jury certainly want to know about this. A. All right.

Q. Who made up the 32½% that you credited to K Co.? A. Well—

Q. What individuals? What individuals? A. Well, it was myself and Joseph Facher and Samuel Lentz and Martin Schneider.

Q. Well, according to this, Samuel Lentz had 4%, didn't he? A. Same as myself.

Q. Yes. You had 4. That's 8. (563) A. Yes.

Q. Facher had 4, is 12. A. Yes.

Q. Schneider had 4, is 16. A. But if you double it, it is 32.

Q. I see, I see. In other words, are you trying to say that what you did was, you had 16% at one time and that that should have been doubled as a result of change in capitalization, so as to give you 32%?

The Court: That's a very ingenuous explanation but I wish you would let him say it instead of you.

Q. Tell us what you mean. A. At first it was 32½, then changed into 16—

The Court: So when you increased the capitalization you reduced the percentages, is that right?

The Witness: Well, the capital figured out practically the same thing but the percentages were different. But it figured out the equivalent to the same thing.

The Court: All right, all right. Go ahead.

Q. Now then, will you tell us—you say you bought Chick Callahan's 1½%. A. I did.

Q. Does that show up anywhere here in your holdings? A. Well, it didn't show up because as I started figuring (564) at one time, it was some—it didn't jibe exactly with the figures but that's how it was made.

Q. Now, for what purpose did you give this sheet to Rutkin?

* * *

The Court: I shall sustain the objection.

Q. What did you say to Rutkin when you gave it to him?

* * *

The Court: You gave it to Rutkin, did you?

Mr. Van Riper: Yes, sir.

The Witness: I did.

The Court: When?

The Witness: Well I don't remember exact the time of it but he was up to my office one time and—

The Court: How long ago?

The Witness: Oh, that was '34, '35, or when the Company was founded, when Browne Vintner Company was founded.

* * *

(565) Q. Rutkin came into your office and you had a discussion with him with reference to this sheet, did you not? A. I did, yes.

Q. And did you have a discussion with him with reference to the writing that you put on here yourself? A. No, there was no discussion. I—

. . . .

Q. Did you tell Rutkin about this writing? A. Well, yes, I told him. This is my writing.

. . . .

(566) Q. Well, what did you say to Mr. Rutkin, Mr. Kanengiser, with reference to these figures that you wrote?

. . . .

A. I said to him, "Well, here is a sheet of figures that we finally came to a certain understanding, and here is the percentages. You can verify it."

The Court: Well, that was not an understanding that you arrived at, was it, these figures of yours?

The Witness: No, Mr. Cohen asked me—

The Court: These were your own figures, weren't they?

The Witness: This was the figures for everyone.

The Court: These are the figures that you gave, not that Cohen gave you; these are the figures you gave.

The Witness: The percentages.

The Court: Yes.

(567) The Witness: Yes.

The Court: All right.

Q. You are talking now—

The Court: You told that to Rutkin.

The Witness: Yes, yes, sir.

The Court: All right.

Q. When the Judge says the figures that you gave—you are talking about the figures that you wrote on here, are you not? A. The percentages, not these figures I didn't write on here.

Q. Not the typewriting. A. Not the typewriting.

Q. The ink writing. A. No.

Q. Now then, did you say anything to Rutkin about the 1½% that you had Chick's, marked Chick's? A. Well, after I looked over the figures and I saw they didn't jibe up, as I said, I bought out from Chick 1½%, but it doesn't figure out according to the money invested, but we let it go at that.

Q. You called his attention to the fact that it didn't figure out? A. Yes.

Q. All right. Now then, Mr. Kanengiser, do you remember a (568) time when the old combine broke up, that there was some question about $35,000 in connection with Rutkin? A. I have some recollection of it.

Q. And do you recall what that $35,000 was? A. Well, there was $35,000 in question, which a lot of it was spent for different expenses and a lot of it was supposed to have been collected by Rutkin and he claimed he couldn't collect it, and so that was forgiven.

Q. It was forgiven. Now, was Mr.—

The Court: By whom, by whom?

Q. —Reinfeld—

The Court: By whom?

The Witness: By our groups, by our companies.

The Court: Who was present?

The Witness: Well, it was—I don't recall exactly who was present but must have been some members of the Reinfeld family.

The Court: No, no, not what must have been; what was.

The Witness: Well, it was—

The Court: You recall the discussion about the $35,000?

The Witness: I do.

The Court: Now with whom was the discussion?

The Witness: It was with Mr. Reinfeld and the (569) members of his family.

The Court: And whom else?

The Witness: And my group.

The Court: All right.

Q. And did Mr. Reinfeld take part in the discussion when the $35,000 was forgiven? A. Yes, he did.

* * *

Q. When the combination broke up did Rutkin have an interest in it?

* * *

A. Yes.

(570) The Court: How do you know he did?

The Witness: Well, this amount of money was made up, the $469,000, and surely he was a party to it.

The Court: No, no, I will not allow that.

Mr. Tyne: I ask that that be stricken, if the court please.

The Court: Strike that from the record.

Q. Did you, let me put it this way, withdraw that, please—before the combination broke up, what percentage did Rutkin have? A. 12%.

* * *

Q. In the old combination, now, we are talking about. A. In the old combination, yes.

Q. Not Browne Vintners, in the old combination. A. In the old combination he had 12%.

Q. Well, what did he have here on this sheet? A. That would be 6%.

Q. 6%.

Mr. Tyne: I would like to know what you are directing the witness' attention to.

Mr. Van Riper: I am directing his attention to the percentage opposite Rutkin's name.

(571) The Court: Well, what did he have in the old combination? You said 12%. Is that so?

The Witness: 12%, yes, sir.

The Court: All right.

Q. Now, what does the 6% mean there, opposite Jim R.? A. Well, as I explained before, the same as my percentage was 8, showed 8, and we changed it to 4, so his percentage was changed into 6.

Q. All right. Well, did he have that, did he have a percentage in there at the time the combination broke up?

* * *

The Court: You were a member of the combine, were you?

The Witness: Yes, sir.

The Court: And Reinfeld was a member of the combine?

The Witness: He was.

The Court: Who else was in the combine?

(572) A. Well, all these people I mentioned before; Sam Lentz.

The Court: Is Rutkin there?

The Witness: Rutkin is here.

The Court: All right. And you say that Rutkin had 12%?

The Witness: Rutkin had 12% at the time, at that time.

The Court: All right.

Q. Now, Mr. Kanengiser, let me ask you this question: When the old combination broke up and Browne Vintners started, did you take over any Rutkin's percentage in the old combination? A. No, sir.

Q. So far as you know, did anyone else take it over? A. No, sir, not as far as I know.

Q. So far as you know did Rutkin continue to have his interest in that percentage, whatever it was? A. (The witness nodded.)

Mr. Tyne: Well, I object to it, if the court please because he was not in Browne Vintners; he hasn't shown that he was taking any active part in it. How would he know about Rutkin.

The Court: He said the old combination.

Mr. Tyne: Oh, the old combination.

(573) Mr. Van Riper: And, if your Honor please, Reinfeld has testified that—

The Court: We are not talking about what Reinfeld has testified. We are just trying to get what this witness testifies to.

Mr. Van Riper: Yes, yes.

Q. So, as far as you know, no one took over Rutkin's interest in the old combination, is that right? A. No, sir.

Q. Now then, Mr. Kanengiser, going back a bit, when Rutkin first came in the old combination, while prohibition

was still on, did he have any duties that you know of? A. He did.

Q. What were his duties? A. Well, to direct deliveries, and he used to sell goods, the same as other people did, and collect money.

Q. Did Reinfeld ever tell you that Rutkin had declared himself in, that he had just come in because he had wanted to make some money, or something to that effect? A. No, Reinfeld—Mr. Reinfeld brought in Jim Rutkin to the combination. He and the family introduced him into the combination.

The Court: Did you put money in that original combine?

The Witness: I did.

(574) The Court: Did Reinfeld?

The Witness: Yes.

The Court: Did Rutkin?

The Witness: I don't know if Rutkin did or not because—

The Court: You know he had an interest in it.

The Witness: Yes. Well—

The Court: You know he had 12%. Where did the 12% come from?

The Witness: He had made his deals with Reinfeld and the family.

The Court: Weren't you a part of the combine?

The Witness: Well, in those days you wouldn't be asking too many questions.

The Court: Of your own partners, you weren't asking too many questions?

The Witness: That's right.

The Court: Well how do you know that Rutkin had 12% if you weren't asking questions?

The Witness: Well, we used the earn money and the money was divided and it was so—so computed.

The Court: And you knew all about that.

The Witness: Yes.

The Court: You asked about that.

The Witness: Yes, sir.

(575) The Court: But you don't know whether Rutkin put any money in or not.

The Witness: I wouldn't know whether he did or not.

The Court: You wouldn't know. All right.

Q. Do you know whether or not Rutkin took over someone else's interest, percentage? A. I think that—yes, he took over somebody's interest.

The Court: Whose?

The Witness: There was a man by the name of Hendler. He stepped out.

The Court: Did he pay for it?

The Witness: Did Rutkin pay for it?

The Court: Yes.

The Witness: I assume that he did.

The Court: No, no, I'm not asking you to assume. You were a member of this combine.

The Witness: I don't know; I don't know.

The Court: You don't know?

The Witness: I wouldn't know.

The Court: All right.

* * *

(575A) Q. Anyhow, you say that Rutkin took over Hendler's interest, is that correct? A. Yes, sir.

* * *

Morris Kanengiser—for Defendant—Cross.

(576) *By Mr. Van Riper:*

* * *

Q. Mr. Kanengiser, you told us earlier that there were two groups that may be referred to as the Kanengiser group and the Reinfeld group? A. Yes.

Q. The Reinfeld group was Reinfeld? A. That's right.

Q. Now, when you wrote down here "James 12," I understand you to say you were talking about James Rutkin having 12 percent? A. That's right.

* * *

Q. What does this 12 percent refer to? A. The 12 percent was the 12 percent of our group.

Q. Of the Reinfeld group? A. Of the Reinfeld group.

Q. And that Reinfeld group had how much in dollars?

(577) A. Had $500,000.

Q. All right, sir.

* * *

Cross examination by Mr. Tyne:

Q. You referred to yourself, Mr. Kanengiser, as part of the Reinfeld group, is that right? A. That's correct.

Q. You were all part and parcel of that group? A. Yes, we were all—

Q. You weren't one faction and the Reinfeld another faction? A. Reinfeld was his group and his family and I was mine.

Q. You handled all the money, didn't you? A. Not all the money.

Q. Well, didn't you and Facher handle all the money and keep the books and records? A. Everybody handled money.

Q. Well, didn't you, personally, and Facher have the money in your vaults and accounts and so on? A. Not

exactly so, everyone in the group, in the Reinfeld group or my group had money.

Q. Didn't you pay out the money when there was a payoff at any particular time, you and Facher paid off, didn't you? A. I did and so did others.

(578) Q. Who else? A. Well, it would be—

Q. Joe Davis? A. Not Joe Davis in our group, no, sir.

Q. Well, you were the finance man, isn't that so? A. Well, not exactly so.

The Court: When the money was received, where did it go, just anybody grab it?

The Witness: We used to have notes and memorandums and money was sometimes brought to me, I would pay out; other members in the group would pay out.

It wasn't exactly that I received those monies—

The Court: Well, who kept the books?

The Witness: Well, there were just notes and memorandums kept.

The Court: Well, wasn't there any central place where these books were kept?

The Witness: Well, we never kept much of books; it was just notes and memorandums.

Q. Didn't you discuss it with each other? A. Yes sir.

The Court: And wouldn't you speak to each other—

The Witness: They all spoke to each other.

The Court: They all knew about each other?

The Witness: Oh, yes.

(579) The Court: Then how would you know how much money there was for the combine if every-

body just took it and paid it? You didn't have any system of accounting?

The Witness: Yes, there was a memorandum. I would receive a memorandum, too.

The Court: What would you do with it?

The Witness: After the money was paid out, was divided, we would just destroy all the records.

The Court:

Q. Wouldn't you show your memorandum to Reinfeld?

The Witness: Yes, I did.

The Court: Didn't he show his to you?

The Witness: Yes.

The Court: Well, who kept the figures?

The Witness: Well, we all kept figures. I did; and so did they, the other parties.

By Mr. Tyne:

Q. You were asked this question in the New York case of Rutkin against Reinfeld for $22,000,000—"Did you have anything to do with keeping the record; were you the (580) cashier of the partnership or anything of that kind? "Except monies which were received by me and monies disbursed." A. Well, that was—

Q. And you received the money. A. Not all the money. I received monies but not all the monies. I didn't receive money of everybody. They had the same right and privilege to receive money and pay out.

Q. Who else received monies other than yourself and disbursed them? A. Well, it would be Mr. Reinfeld, Samuel Reinfeld, Saul Reinfeld.

Q. You are sure of that? A. Yes.

Q. You testified that way in New York? A. I wasn't asked that.

Q. I will direct you to this question: "And who received the others and disbursed them?" Who received the others and disbursed them, repeating the question, or don't you know? A. "I would not know that."

Didn't you so testify? A. Well, probably the question was somewhat different from what you asked me here.

Q. Well, I will read it back to you:

"Q. You received the monies and disbursed them?"

"A. Received some and some disbursed.

(581) "And who received the others and disbursed them, continuing the question, or don't you know?"

Your answer: "I would not know that." Didn't you so testify? A. Well, it isn't down right; we all received money and Mr. Facher did and so did the Reinfeld family and we all paid out.

The Court: Well, didn't you have any means of knowing how much was received and how much was paid out?

The Witness: Well, we did; I kept notes, memorandums.

The Court: You kept notes and memorandums?

The Witness: And so did the rest.

The Court: Well, what did you do with the notes and memorandums?

The Witness: After money was disbursed or paid out, I used to destroy them.

The Court: Mr. Kanengiser, let me make this suggestion: You had a combine, a certain group of men and there were very large sums of money received. Who was it kept the final account of all the monies received and all of the monies paid out, no matter what it was paid out for?

The Witness: Well, if I paid out money I would just—

The Court: If you got money, would you tell everybody else you got it?

(582) The Witness: Mostly, yes.

The Court: And then as you spent it out, you told them about that?

The Witness: Yes, sir.

The Court: Would they all keep it in their heads?

The Witness: No, I probably gave them a slip of paper, so much money was paid out to so-and-so.

The Court: And each one kept all the accounts.

The Witness: Well, each one had the same memorandum.

The Court: There was no central place where you kept all the records?

The Witness: No, sir.

By Mr. Tyne:

Q. You are testifying before in answer to his Honor's question that you don't know whether Rutkin put any money into the enterprise, into this partnership enterprise, is that right? A. Yes, sir.

The Court: Now, is that a memorandum of the money put in?

The Witness: Well, I didn't get any memorandum of that.

The Court: Well, how did you know how much anybody put in?

(583) The Witness: I don't know whether Rutkin put any money in or not.

The Court: Well, how did you know about the 12 percent?

The Witness: Well, when he used to divide the profit, he would just figure James Rutkin 12 percent.

The Court: How much did you figure yourself for?

The Witness: Well, from my own figure—

The Court: 42½ percent for your group?

The Witness: It was 32½.

The Court: 32½ percent for your personal group?

The Witness: Yes.

The Court: Well, that represented certain money you put in?

The Witness: That's right.

The Court: And the money that Reinfeld got represented money that he put in?

The Witness: Yes, sir.

The Court: How did you know that?

The Witness: Well, it was common knowledge whatever monies—we didn't put in so much money to start with; the money was gained as profit.

The Court: Whatever money was put in was common knowledge?

(584) The Court: But not common knowledge as to what Rutkin put in?

The Witness: No.

Q. And did you say he came into the Reinfeld family? A. Yes, sir.

Q. Well, Reinfelds and family's percentage was figured separately, wasn't it? A. Yes, sir.

Q. And Rutkin was figured separately? A. Yes, sir.

Q. So Rutkin was in by himself? A. Yes, but—

The Court: Rutkin was in by himself?

The Witness: Well, Rutkin was a partner with 12 percent.

Q. He had that 12 percent all during the time he was in the partnership? A. It was less when he first got in and it was made larger later on.

Q. And that was figured separately, you said? A. Well, in the group, you know, in the group he is figured (585) at 12 percent.

Q. What was it before it was 12 percent? A. Well, I think at one time it was just 6 percent.

Q. It was 6 percent? A. Yes, sir.

Q. Was that when he first came into the partnership? A. When he first came in.

Q. Do you know whether he put any money in at that time? A. I was before—

Q. You don't know. And about the time he came into the partnership—strike it out.

When was the year that he first came into this partnership? A. I don't recall exactly the year but I would say it was anyway '28 or '29.

Q. '28 or '29, all right. Now, when he came in and—strike it out. When he came in in 1928 or '29 did you have a conversation with Reinfeld about Rutkin coming in? A. To my best recollection, Reinfeld and the family brought him in and introduced him as, "This is our new partner."

Q. Well, didn't Joe Reinfeld have a talk with you prior to Rutkin's coming in; didn't he tell you that, "Rutkin wants to come in"? (586) A. I don't recall.

Q. You don't recall that? A. No, sir.

Q. And didn't he tell you that Rutkin, "wants to declare himself in"? A. No, sir.

Q. And didn't you have discussions over a period of a couple of months, and didn't you and Joe Reinfeld agree that it was better to have him in than outside? A. Well, it was probably so, it was better for us to have him in.

Q. Because he would make trouble for you if you didn't take him in, isn't that so? A. No, I didn't hear anything about that.

Q. You didn't hear anything about that?

The Court: Why was it better for you to have him in?

A. Well, it was more help to deliver goods and to take care—

The Court: Wouldn't that particular percent that he had take some of your profits away?

The Witness: No, I had my percentage at the time, that didn't differ my interest.

Q. Well, now, let's see. When you say that Hendler went out, Rutkin's percentage was increased to 12 percent? A. Not right there and then; later on.

(587) Q. Well, who got Hendler's percentage in this partnership? A. It was Mr. Rutkin.

Q. Yes. And at that time, you testified before, and I think two or three times, that you don't know whether he put any money in at that time? A. Well, he made his deal with the Reinfeld family and I don't know how much money he put in.

Q. Well, you were handling the funds, were you not, and you were making the payoffs? Isn't that so? A. I was paid off, and so was other people.

Q. And how much during the whole period of time that Rutkin was in the partnership up until the time—the dissolution of the partnership, how much did you pay off Rut-

kin semi-annually, annually, or however you paid it off? A. Well, I wouldn't recall the figures, exactly how much we paid off.

Q. How much did you pay yourself? A. I wouldn't know that either. We never kept figures to that effect.

Q. And when the partnership was dissolved, isn't it a fact, Mr. Kanengiser, that you presented a slip to Rutkin showing that he was $35,000 overdrawn on his percentage interest? Didn't you? A. No, sir, I never did.

Q. You never did? (588) A. No, sir.

Q. And did you have a conversation with Mr. Reinfeld about Rutkin? A. We did.

Q. And didn't that conversation relate to the overdrawal of Rutkin, by Rutkin, of his account? A. It was agreed—there was a lot of money Rutkin claimed he had to pay out for expenses and some money he didn't collect and it was agreed to forgive it.

Q. Forgive what? A. To forgive that $35,000.

Q. How much money was there outstanding that Rutkin hadn't collected? A. Well, I wouldn't remember exactly how much, but it amounted, between his expenses and the outstanding, that is what he claimed was $35,000.

Q. Who claimed it was $35,000? A. Well, Rutkin did.

Q. Claimed it was $35,000. Where did he get the information from? A. Well, we all had information.

Mr. Van Riper: Pardon me, your Honor. How does the witness know where he got it from?

Q. Well, did he tell you? Strike it out. He was the one who said to you, "Well, there is money that I haven't (589) collected and there are expenses, and they total $35,000." Is that right? A. That is just what he explained, and it was explained to my group and the Reinfeld group and it was forgiven.

Q. All right. Now, when did he explain that to your group and the Reinfeld group? A. At the close of prohibition.

Q. In 1933 or '34? A. I would say '33.

Q. '33. A. Late in '33.

Q. And where did that take place? A. Well, it was on 60 Branford Place, at my office, I would say.

Q. All right. Now, where did—strike it out. Did Rutkin present any proof to you of this $35,000 allegedly representing expenses and uncollected debts? A. Yes, he did.

Q. He did? A. Yes.

Q. Where is it? A. Oh, well, we didn't keep any records. That was not a legitimate business, to have accountants and bookkeepers, we just had notes and we destroyed them.

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(590) Q. Did Rutkin receive any distribution of the funds of the partnership upon its dissolution in 1933? A. At the dissolution?

Q. Yes. A. At that time, whatever money was left over went for Browne Vintners.

Q. I am asking you again whether or not Rutkin received any dividend or any distribution upon the dissolution of the partnership in 1933.

Mr. Van Riper: Now, if the Court please, I object to the question; the witness has just answered.

The Court: He testified that money went to Browne Vintners. But of the money that went to Browne Vintners, was any of it credited to Rutkin?

The Witness: Naturally, whatever—

The Court: No, not naturally, was it actually?

The Witness: It was.

The Court: All right. By whom?

(591) The Witness: By the group.

Q. You say by the group. Well, now, by whom, by whom, specifically? A. Well, it was by my group and the Reinfeld family, as well.

Q. Did you have a discussion as to who would go into Browne Vintners? A. We did.

Q. Did you have anything to do with Browne Vintners? A. Well, I had nothing to do with Browne Vintners except I had an investment there.

Q. Did you have anything to do with organizing Browne Vintners? A. No, I had nothing to do with that.

Q. You had nothing to do with that? A. No, sir.

Q. And you didn't know how much—did you have anything to do with the stock? A. Well, I never had no stock, never saw any stock.

Q. No. Did he ever attend any meetings? A. Never did.

Q. No. Did he ever attend any—strike it out. Did you ever hear what was paid for Browne Vintners?

(592) Q. (Continuing.) When it was organized? A. As far as I know, there was nothing paid because it was a new company, new organization.

Q. Well, money was paid off, wasn't it? A. Well, it was probably paid out but I never received any information as to how much.

Q. You don't know how or what arrangements were made for the purchase of any Browne Vintners' stock, do you? A. No.

Q. You don't know anything about the organization of Browne Vintners and the percentage of the stock, do you?

A. I was never called to any meetings and I was never over—much.

Q. Even though, as you say, you had an interest in Browne Vintners? A. Well, I did have an interest. I used to go up to Mr. Cohen's office and he usually had the information for me.

Q. Now, you testified that you borrowed $10,000 from Mr. Reinfeld, is that right? A. That's correct.

Q. And you signed a note for it? (593) A. I did.

Q. And you had to pay it back? A. I did.

Q. And when was that? A. In 1944, I think.

Q. That was after the dissolution? A. That was after the dissolution.

Q. Yes. Rather, after the sale? A. Suit was started and I didn't want to go to Court, and I figured that I owed it and wanted to pay it.

Q. You didn't make any contention that you had an interest in Browne Vintners at that time, did you? A. I did so.

Q. Did you offset it against the claim of Mr. Reinfeld? A. I couldn't, it was not allowed to be offset. Mr. Popik started suit against me.

Q. Yes, but you could have set up a counterclaim for your interest in Browne Vintners, couldn't you? A. I didn't want to go to Court. It was explained to me that a lot of money was paid out in expenses and to different people, and it was my share of the loss.

Q. And you were satisfied with that, is that so? A. I was, yes.

Q. And you made no further demand? A. I made no further demand because I couldn't get anywhere.

Q. And you were represented by counsel? A. Well, I was not represented by counsel; Mr. Popik wrote me a

letter and I went up to see him and tried everything, and he said, "You have to pay it or else we go to Court."

The Court: You had no lawyer?

The Witness: No, I had no lawyer for this particular case.

The Court: You had lawyers for other cases?

The Witness: I did. In fact, I have a lawyer, Mr. Blank, and he says, "Well, if you are sued and you have no defense," so he says, "You might just as well make settlement and pay it."

Q. Did you tell Mr. Blank about this alleged interest in Browne Vintners? A. I didn't—I think I did.

Q. You think you did? A. I did tell him.

Q. And even after you told him he told you, "Well, if you have no defense—" A. I had no proof, I had no stock, I had no proof or papers of any kind.

Q. Well, you had this paper, didn't you? A. Well, I really forgot about this paper. I only—

Q. When did you find this paper?

* * *

(595) The Witness: When the suit was started and Judge Van Riper called me to his office and showed me several papers and asked me, "Is that your writing?" and I said, "It is."

Q. When was that? A. That was just about, probably three weeks ago.

Q. Three weeks ago? A. Or a month ago, yes, sir.

Q. You say you gave this paper, referred to by Mr. Van Riper, to Mr. Rutkin in 1934?

Mr. Van Riper: Now, if the Court please, the witness didn't say specifically what year he gave it to him.

Morris Kanengiser—for Defendant—Cross

Q. I think you said 1936 or 1937, isn't that so? A. No, it was before that.

Q. When did you give it to him? A. I don't recall the exact year.

The Court: Well, about when?

The Witness: It would probably be in 1934, '35.

Q. '34? A. Yes.

Q. Well, now, when was it—'34 or '35?

(596) The Court: He said it was either '34 or 35.

The Witness: I don't remember, I didn't keep any records.

Q. When was the corporation organized? A. Which corporation, Browne Vinteners?

Q. Yes. A. I think that was organized late in '33 or beginning of '34.

Q. And when did it start business? A. It started business in '34.

Q. Yes. In the latter part of 1934, is that right? A. Yes, sir.

Q. Was there any increase in capitalization of Browne Vintners in 1934? A. Not in 1934 because it was organized at that time.

Q. Well, was there any— (597) A. (Continuing) Besides, I am not exactly sure to the dates or the year.

Q. Was there any increase in capitalization in 1935? A. I think there was.

Q. You think there was? A. Yes, sir.

Q. How much? A. Well, they wanted to increase the capital a million dollars and I was called upon to put up some more money, but I had none; that is, I had other investments and I just didn't go in for the increase.

Q. Isn't it a fact, Mr. Kanengiser, that some time later on, instead of being called upon to put up more money you were offered an opportunity to purchase some of this stock? Weren't you? A. I was what?

Q. Weren't you offered an opportunity to purchase some of this stock that was issued in recapitalization? A. I was offered, but I had no stock in the first place so I didn't go in any for it.

Q. Well, whether or not you had any stock in the first place—

The Court: What do you mean, you had no stock? You said a few minutes ago someone was fronting for you.

The Witness: Someone was fronting.

(598) The Court: But you had an interest?

The Witness: I would assume so.

Q. You were just assuming you had an interest? A. Yes.

Q. You never had any proof of it, did you? A. Well, the only proof I had that we had an interest there was by word of mouth.

Q. Yes. You say that you bought out "Chick" Callahan's interest, is that right? A. Yes, sir.

Q. Three percent? A. No, 1½ percent.

Q. One and a half percent? A. Yes.

Q. How much did you pay him for it? A. I wouldn't remember that.

Q. You wouldn't remember? A. No, sir; it wasn't much. I don't remember.

Q. Was it 5,000, 10,000, 1,000 or what? A. I wouldn't really remember.

Q. You wouldn't remember? A. It was not big money.

Q. When do you say you got this paper, that you have been referring to, from Mr. Cohen? When did you get that? A. Well, it must have been in '34, or it was in '34, some (599) time during that period.

* * *

Q. When did you get this paper that we have been referring to with these figures on it? A. Well, I put no date on it.

The Court: Give us your best recollection of when you saw it.

The Witness: To my best recollection, it would be some time during the year 1934.

The Court: In the beginning, middle or end?

The Witness: It was probably at the end of 1934.

Q. And how long did you keep it in your possession? A. Again, I wouldn't remember that.

Q. Well, was it a year, two years, three years? A. If I gave it to the man in 1934, I couldn't have kept it very long.

Q. Well, did you give it to Mr. Rutkin in 1934? A. I did, 1934.

(600) Q. 1934? A. (Continuing) Late 1934.

Q. Late 1934. A. (Continuing) To the best of my recollection.

Q. Yes. Insofar as you know, Rutkin had this in his possession since 1934, is that right?

* * *

A. I would say that is right.

Q. You said—strike it out. When did you last talk with Rutkin? A. I hardly saw Rutkin much; I never used to see him too much.

Q. When did you last see him? A. Probably when we were over in New York to testify.

Q. How long ago was that? A. That must have been less than two years ago.

Q. Have you seen him since that time? A. I don't remember seeing him.

Q. You don't remember seeing him? A. No, sir.

Q. Well, can you refresh your recollection in any way? A. No, I don't remember seeing him.

Q. Well, when his lawyer called you up, did you go over to (601) his office? A. I did.

Q. That is Mr. Van Riper? A. Mr. Van Riper.

Q. Yes. Was Mr. Rutkin there then? A. No, he wasn't there at the time I was up there.

Q. Well, was he there at a later time? A. I was only there—

The Court: Did you see him there?
The Witness: No, I did not.
The Court: All right.

Q. It is your testimony that you haven't seen him in the last two years or so? A. Well, I probably saw him on the street, or so, but I don't recall.

The Court: To talk to?
The Witness: I didn't talk to him.

Q. Did you have any conversation with him about this case? A. No, sir.

Q. Going back to the testimony you gave in New York, didn't you testify—

(602) Q. "Q. Well, were you a partner of Mr. Reinfeld? Was Mr. Rutkin a partner, too? A. Yes." Do you remember testifying that way? A. Yes.

Q. Yes. "Now do you know what the respective interests of the partners were in that enterprise? A. I do not recall exactly because it was so many years ago." A. Well, that's right.

(603) Q. "Q. Subsequently do you recall what interest Rutkin had in it? A. I really would not know." Didn't you so testify? A. I did.

Q. Well, is that the truth, that you didn't know what interest Rutkin had? A. It is the truth until I got some recollection or some papers that I looked over.

Q. What papers did you look over? A. (Continuing) Or when I saw the paper Judge Van Riper showed me. I really wanted to just forget the whole thing; I didn't keep a book on it.

Q. You can't justify those figures on anything except the fact that the paper was put in front of you, is that right? A. Pardon me, sir; there are more members in this here group or combine that could testify to what I said.

The Court: Do you have an independent recollection?

The Witness: I have an independent recollection, yes, sir.

The Court: What?

The Witness: I do after I looked at that paper that Judge Van Riper showed me, it came to me, I recalled all the figures.

Q. Up until the time that you saw that paper, you didn't (604) know what percentage Rutkin had in the partnership? A. I wouldn't say I didn't know, I probably didn't

know it at the time I was questioned; I didn't know what partnership I was questioned about.

Q. All right. Now, did that paper refresh your recollection as to how much money Rutkin was paid at the time the partnership was dissolved?

Mr. Van Riper: Now, if the Court please, there isn't any testimony that Rutkin was paid any money when the partnership was dissolved. The testimony of this witness is that Rutkin's share went into Browne Vintners.

Mr. Tyne: I object to that and ask that it be stricken out.

The Court: He said he had 12 percent of the 493,000, which with 39,000 this man said was the basis for the founding of Browne Vintners.

The Witness: Pardon me, sir.

As I recall now, we had, our group, had half a million dollars in Browne Vintners, that is, aside from the other group.

The Court: That is, at the time of the founding?

The Witness: That is correct, sir.

The Court: So how much did the other group have?

The Witness: They had, also, a half million dollars.

The Court: So that Browne Vintners was founded (605) with a million dollars?

The Witness: Yes, sir.

The Court: You are sure of that?

The Witness: My group, or, that is, the Reinfeld group and myself had a half million dollars in it.

The Court: And the Zwillman group and the others had another half million dollars?

The Witness: Another half million dollars.

The Court: So that a million dollars went to the founding of Browne Vintners at the beginning?

The Witness: That's right.

By Mr. Tyne:

Q. All right. Now, what did you do with that half million dollars that your group had control over? A. I didn't have it; it was turned over to the Reinfeld family, and that was for the purpose of founding the company.

Q. A half million dollars? A. Yes, sir.

Q. Did you turn over a half million dollars to Reinfeld? A. I didn't.

The Court: Who had this money?

The Witness: Well, it was all the members of the group, it wasn't—

The Court: Who had this money?

The Witness: It was the Reinfeld family, it was (606) myself, it was Joe Facher.

The Court: How much money did you have?

The Witness: I don't recall exactly, but it was made up into a half million dollars, the whole amount.

The Court: Well, did you have the actual cash?

The Witness: Actual cash.

The Court: And you gave it to Reinfeld?

The Witness: Whatever money—

The Court: Was that the 32½ percent of the $500,000 that you paid over?

The Witness: That is correct.

The Court: Have you got that money?

The Witness: I don't say that I had it all, my self.

The Court: Your group?

The Witness: My group.

The Court: Had a 32½ percent of 460-som thousand dollars.

The Witness: Yes.

The Court: And you turned this over to Rein feld to put into Browne Vintners?

The Witness: Plus what we were short to mak up, the $20,000.

The Court: To make up the $500,000?

The Witness: 500,000; 20,000, my share.

Q. Do I understand you to say in answer to his Honor' (607) question that in cash you had one-third, approxi mately one-third of $500,000 under your control or in you control or in your possession? A. I wouldn't say I had i in my possession.

The Court: Your group?

The Witness: The group. It was probabl turned over from time to time in the Reinfeld famil in anticipation of going in Browne Vintners.

Q. But, Mr. Kanengiser, you and Mr. Facher kept thi money in vaults in different banks in Newark and Ne York, didn't you? A. But we turned over most of th money from time to time to the Reinfeld family.

The Court: Did you and Facher keep it in vault, here?

The Witness: Yes, sir, I had a vault and M Facher probably had a vault, too.

The Court: And you took it out of the vaul and gave it to Reinfeld?

The Witness: Yes, sir.

The Court: And, all together, it amounted to 32½ percent of the $500,000?

The Witness: That is correct, sir.

Q. How do you know that there was $500,000 in the partnership at the time it dissolved?— A. Well—

(608) Mr. Van Riper: Wait a minute. If your Honor please, that is not the testimony, that there was $500,000.

The Court: $469,000.

Mr. Van Riper: Yes, sir, that's right.

Q. All right, approximately.

Mr. Van Riper: The only thing is, those figures are confusing.

A. Well, we are to receive figures—and we have to make it up from Mr. Cohen's office.

The Court: You had some money in the vaults at that time?

The Witness: I did.

The Court: You gave your figures to Cohen?

The Witness: I gave my figures to Cohen.

The Court: And everybody else gave figures to Cohen?

The Witness: Well, yes, it was a place, like we get information we used to go up to his office, or the office in Newark.

The Court: How did you get your cash that you had in the vault? From whom did you get that?

The Witness: Well, customers would pay for merchandise, and some by check probably, and when

this was cashed in money, was accumulated and then we turned over the money.

The Court: Put it in a vault?

(609) The Witness: Yes, sir.

Q. Going back to this sum of $10,000 that you said you borrowed from Mr. Reinfeld, I don't know whether you told me or not; when did you pay it back? A. 1944.

Q. 1944? A. Yes, sir.

Q. And that was about four years after Browne Vintners was sold? A. Yes, sir.

Q. Did Rutkin tell you that he had at any time, that he had made an assignment in about the year 1936 of all of any stock that he might have in Browne Vintners to Mr. Reinfeld? A. No, sir. I never saw Rutkin too many times.

Q. He didn't tell you that. You didn't know that? A. I didn't know that.

Q. For which he got $60,000? A. I wouldn't know.

Q. He never told you that? A. No, sir.

Q. Did I understand you to say in direct examination that it was in 1937 that Mr. Cohen gave you this paper that we have been referring to on which you made certain notations? A. Pardon me?

(610) Q. Did I understand you to say that on direct examination? A. I said I delivered it to a man in 1944; how could I have gotten it in 1937?

(611) Mr. Van Riper: Now, if your Honor please, may I just ask that the witness' answer be re-read to him and give him an opportunity to see if he had not made a mistake.

The Court: Oh, I am not going to dig back into that. When did you get it?

Morris Kanengiser—for Defendant—Redirect

Mr. Van Riper: What I want to call the witness' attention to, the witness said "If I gave it to the man in '44 how could I have gotten it—

The Court: Well, that was evidently a mistake.

Mr. Van Riper: No question about it.

The Court: He said it, but it was evidently a slip.

Q. You say on direct you didn't make any reference to the year 1937 when you obtained this from Mr. Cohen, the accountant, is that right? A. I obtained it in 1934.

Q. You insist on that? A. I do.

Q. Did Rutkin at any time after 1934 tell you that he has a six per cent interest in Browne-Vintners? A. No, sir.

Redirect examination by Mr. Van Riper:

Q. Mr. Kanengiser, just a couple of questions, if you will, (612) please. A few minutes ago, Mr. Kanengiser, you turned around to the judge and said "I recall now that our group put in half a million dollars and the Zwillman group put in half a million dollars." Do you recall saying that? A. Yes, sir.

Q. And the Judge said to you, "That made a million dollars in the stock of the Browne-Vintners Company" and you said yes. A. Yes.

Q. And the Judge said, "At the beginning when Browne-Vintners was formed?" A. Well, we had to make up our half million at the beginning when Browne-Vintners was formed; I don't know when the others put up their money.

Q. You looked at this sheet and saw the figure $469,000. A. Yes.

A. This was the money left over from what you call it, the bootlegging days.

The Court: As we called it? Did we call it the bootlegging days?

A. Well, it was mentioned here a few times and we had to make up the additional amount to make our half a million (613) dollars.

Q. Where did the $469,000 go? A. Well, it went for the Browne-Vintners Company.

Q. Browne-Vintners. Now, then, was that increased ultimately from $469,000 to a million?

Mr. Tyne: Now, here we go again; if the Court please. This witness has testified over and over again that at one time there was $469,000 or $489,000 and then there was a million.

The Court: His last testimony in response to my question was that they put up some moneys to make this $469,000 a half a million and that Zwillman and his group put up money to make it a million and that went to Browne-Vintners. Now, is that so?

The Witness: To the best of my recollection.

The Court: So that the $469,000 left from bootlegging days was increased to $500,000?

The Witness: That is correct.

The Court: And then Zwillman and his group put in another half a million and that was used to found Browne-Vintners. That's your best recollection?

* * *

(614) Q. You have said that $469,000 was left from the old combination; right? A. Yes, sir.

Morris Kanengiser—for Defendant—Redirect

Q. That that went in to the Browne-Vintners? A. That's right.

Q. Did that found Browne-Vintners? Was it founded at that time? A. Well, we made up the balance to make it a half a million in our group and that was for the purpose of founding the (615) Browne-Vintners.

Q. Well, to make it a half a million, you only needed $3,000, didn't you? A. Yes.

Q. Was that used to make up Browne-Vintners, is that right? A. Yes, sir.

* * *

Q. Is it a fact then that Browne-Vintners was founded with half a million dollars?

Mr. Tyne: I object; trying to put the words in the witness' mouth.

The Court: Is that the fact?

The Witness: Our group had half a million and—

The Court: Zwillman's group put in half a million?

The Witness: Yes, sir.

The Court: And that was the million dollars that was used to found the Browne-Vintners?

The Witness: Yes, sir.

The Court: That is your best recollection?

The Witness: That is my best recollection.

The Court: Because you can only testify from what you recall.

Q. Mr. Kanengiser, you told us this morning that you had put (616) in $1226; do you remember that? A. Yes, sir.

Q. What was the purpose of putting in your $1226? A. Well, it was brought out probably a dozen times that

it was the balance to make up to the amount to make it $20,000; there was $18,000 some.

Q. At that time. And why was it necessary to put in more money to bring your share up to $20,000? A. Well, that was the round figure and each one had a certain figure to make up the half a million dollars.

Q. What was being done by the company with that money? A. Well, merchandise, I suppose, had to be bought and the company started to do business and you certainly cannot do business without money.

Q. Well, wasn't there a time when the company increased its capital stock? A. Yes, later on the company increased its capital stock.

Q. From what to what? A. It was—I know I was called upon at one time to have it increased to two million dollars and I couldn't put up my proportionate share.

Q. But before it was increased to two million, wasn't it increased before that?

* * * *

(617) The Court: Before you had the call for two million was it increased from the million?

The Witness: No, sir, not to my recollection; I wouldn't know.

* * *

Q. Was there a time when the capitalization was increased from $469,000 to a million dollars? A. Yes.

The Court: When was that?

(618) The Witness: That was at the beginning of the founding of the company in 1934.

Q. Well, Mr. Kanengiser was the capitalization increased after the company was founded? We are talking

about an increase in the capitalization. A. Well, yes, the capitalization was increased later on.

The Court: When?

The Witness: I wouldn't recall just when.

The Court: To what sum?

The Witness: I was called upon if I could put up more money to make it to the amount of $2,000,000 but I didn't go into that.

Q. Mr. Kanengiser, will you please—

The Court: What Judge Van Riper is trying to ask you is this. You testify that the original capitalization was a million dollars.

The Witness: That's right.

The Court: 500,000 from your group; 500,000 from Zwillman's group.

The Witness: Yes.

The Court: He is now asking wasn't the original capitalization half a million and then increased to an amount—

Q. Whether the original capitalization wasn't $469,000 and then increased to a million. (619) A. As far as I remember our group put up half a million and the other group put up the other half.

Q. When that happened you had a million in? A. Yes.

Q. Now, before it got up to a million dollars it was 469,000

Mr. Tyne: I object, your Honor.

The Court: I think he has said about eight times that he put in the $1200 to do his share toward raising the 469,000. You had a half a million. Is that the fact?

The Witness: That is correct.

The Court: Your half a million was added to the Zwillman half a million making a million, and that is your best recollection.

The Witness: That is my recollection.

* * *

(620) Q. Now then, this 469,000 Mr. Tyne asked you some questions about. Who had it in the final analysis, who had the $469,000 all at one time, did any one man have it all at one time? A. No one had the money. From time to time money was turned over, from time to time.

Q. And how did it get in the Browne Vintners? A. It was turned over lastly into the Reinfeld family and they put it into Browne Vintners.

The Court: Who fronted for them? Their names weren't used, were they?

The Witness: No, I suppose not; through fronts.

Q. When you say their names were not used you mean at the time of the founding? A. Yes.

Q. And your name wasn't used either? A. No.

Q. You said in answer to one of Mr. Tyne's questions "you don't know anything about the formation of Browne Vintners" and I think you said yes to that, that you didn't know anything about it. A. Yes.

Q. Did you have a discussion with Joe Reinfeld at the time Browne Vintners was formed or just before it was (621) formed? A. We spoke about it.

Q. And was that discussion about the formation of this new company? A. It was.

Q. Did Reinfeld give you certain information about the company that was to be formed? A. Yes, he did.

Q. And when you said you didn't know anything about it did you mean you had nothing to do with the actual prep-

aration of the company? A. I was not at the actual meeting of the formation of the company.

• • •

(622) Q. Now, the question was did other partners,—was their account overdrawn too or did they have indebtedness,—that was my question, did the other partners have an indebtedness. A. Indebtedness to who?

Q. To the combine; at the time they went out did they owe money? A. Well, if they did they paid it up.

Q. Do you know whether they did or not? A. I don't know of anyone that owed any money except to make up our proportionate share.

Recross examination by Mr. Tyne:

Q. You say if there were other indebtedness by other partners they paid it up, is that right? (623) A. Well, if anyone loaned money, or I am assuming that I say they paid up.

Q. All except Rutkin? A. Well Rutkin, that account that you are figuring on that was as I explained it.

Q. Well, all except Rutkin paid up their indebtedness, is that so, to the combine or partnership? A. Well, Rutkin—

Q. Why was Rutkin given special treatment if his debt was forgiven? A. Well, he claims he couldn't collect that money that was outstanding and a certain amount went to expenses and then it was forgiven.

Q. But you have testified now that other partners had their debts forgiven. A. I don't say other partners except to make up to the 20,000 if that's what you are saying.

Q. You are now saying that other partners didn't have any debt to the combine? A. I am not saying that. I am saying to make up their proportionate share of $20,000.

Q. Proportionate share of $20,000? A. To the investment in Browne Vintners.

Q. Isn't it a fact or do you know it to be a fact because Rutkin was overdrawn $35,000 Reinfeld had to make it up? A. I wouldn't know that.

(625) Mr. Van Riper: Now, if your Honor please, I offer in evidence the paper marked Exhibit D-10, I think, for identification, the paper which was testified to by Mr. Kanengiser this morning.

The Clerk: D-9.

(627) The Clerk: This was marked D-9 in evidence.

(628A) EDWARD JOSEPH O'LEARY, called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. O'Leary, where do you live, please? A. At the New York Athletic Club.

Q. And what is your business, sir? A. I am president of the Schenley Import Corporation.

Q. And I take it by the name that they are engaged in the whiskey business? A. Right.

Q. And you have been engaged in that business for how many years? A. Since repeal.

Q. Do you know Rutkin, the defendant here? A. I do.

Q. And do you know Joseph Reinfeld? A. I do.

Q. Did you know the Browne Vintner Corporation when Reinfeld was in it? A. Yes.

Edward Joseph O'Leary—for Defendant—Cross

Q. And at that time you were also in the liquor business, I take it? (628B) A. Right.

Q. You were a competitor of Browne Vintners? A. Yes.

Q. Now, did you have occasion to see Rutkin during the time that Reinfeld was associated with Browne Vintners? A. Yes.

Q. Where did you see Rutkin? A. I saw him in different restaurants and cafes.

Q. In what cities? A. New York, Miami, Chicago.

Q. And when you saw Rutkin what was he doing? A. He was promoting the sale of White Horse Whiskey.

Q. And what were you doing? A. Promoting the sale of Haig & Haig.

* * *

Cross examination by Mr. Tyne:

Q. Where, specifically, Mr. O'Leary, did you see Mr. Rutkin when he was promoting the sale of White Horse Whiskey? A. In the International Casino on Broadway.

Q. When? A. Well, it was some time, I would say, in '37.

Q. 1937.

The Court: You saw him promoting it at that time or just saw him there?

(628C) The Witness: I saw him there.

The Court: Well, the question was, where did you see him promoting the sales of the whiskey.

The Witness: I don't know how to answer that question.

Q. You don't know how to answer that question?

The Court: Well, I don't know how you promote sales except you might go around and collar a

guy and say, "Mine is a good whisky." I don't know what to do.

The Witness: Why, you try to influence people to use the particular brand that you are selling.

The Court: Did you see him do that at the International?

The Witness: Yes.

The Court: What was he doing?

The Witness: He was inviting people to partake of his whiskey.

Q. You mean at the bar? A. At a table.

Q. Table. You mean he went in there, like you did, for dinner or cocktails or drinks, is that right? A. That's right.

Q. Now, what time of the day was this, Mr. O'Leary? A. This particular time that I remember distinctly was about seven o'clock, I would say.

(629) Q. Dinner time? A. Dinner time, and before that.

Q. Were you in for dinner at that time? A. I was in there.

Q. In there for dinner? A. No, I was in there trying to get an order.

Q. You were in there trying to get an order? A. Yes.

Q. And was Rutkin in there at that time? A. He was in there.

Q. And what was he doing? A. I can't say what he was doing.

Q. Did you see what he was doing? A. No.

Q. Then you don't know what he was doing on that occasion? A. I couldn't prove that he was doing anything.

Q. You couldn't prove that he was doing anything. Now, where else did you see him, Mr. O'Leary? A. I saw him in Miami.

Edward Joseph O'Leary—for Defendant—Cross

Q. Where? A. In a restaurant on Park Avenue.
Q. A restaurant on Park Avenue? A. Yes.
Q. When? A. Oh, I would say around '41, or '40.
(630) Q. '40 and '41. A. Yes.
Q. What brought you into the restaurant? A. I was promoting the sale of Haig & Haig Whiskey.
Q. Your own whiskey, Schenley Whiskey? A. No, Haig.

The Court: Haig & Haig?
The Witness: Yes.

Q. Did you see Rutkin there- A. Yes.
Q. What was he doing? A. The same as I was.

The Court: Promoting Haig & Haig?
The Witness: No, he was promoting White Horse Whiskey.
The Court: What did you see him doing?
The Witness: Asking people to have a drink.

Q. You saw him asking—

The Court: I have asked people to have a soda with me and I wasn't promoting the sale of soda.

Q. You say that was in 1941, sir? A. I am not positive.
Q. '40 or '41? A. I am not positive of the date.
Q. Well, was it '40 or '41? (631) A. I couldn't say.

The Court: You saw him in there buying drinks; is that all you saw?
The Witness: That's right.

Q. Is that all you saw him doing? A. That's right.
Q. Did he buy you a drink? A. Yes.
Q. What did he buy you? A. I took White Horse.

Q. You took White Horse? A. Yes.
Q. And did you buy him a drink of Haig & Haig?

The Court: Oh!

Q. Where else did you see him? A. I saw him in Chicago.
Q. When?

The Court: What was he doing then, the same thing, buying drinks?

The Witness: Same thing.

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(632) JOSEPH FACHER, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Facher, where do you live, please? A. 31 Eckert Avenue.

Q. Newark? A. Yes.

Q. What is your business now, sir? A. Real estate and building.

(633) Q. You are related to Mr. Kanengiser, who was on the stand this morning? A. Yes, sir.
Q. In what way, sir? A. Brother-in-law.
Q. Now, do you know Mr. James Rutkin? A. Yes, sir.
Q. How long have you known him? A. About 20 years or so.
Q. How many? A. 20 or 24 years; since prohibition.

The Court: Since prohibition was over or during prohibition.

The Witness: No, during prohibition.

The Court: During prohibition?

The Witness: Yes.

Q. How long have you known Reinfeld? A. Before prohibition.

Q. Before. Now, then, were you interested in a combination doing business in liquor during prohibition? A. Yes, sir.

Q. And who were your partners in that? A. Well, the Reinfelds, Kanengiser, Lentz, Marty Schneider and a few others in South River.

Q. How about Rutkin? (634) A. And Rutkin.

Q. Was Rutkin a partner? A. Yes.

Q. Now, then,— A. He wasn't a partner from the start, but he came in it.

Q. He came in later? A. Later.

Q. When he came in later did he take somebody's place? A. Yes, sir.

Q. Whose place did he take? A. George Hendler's.

Q. Hendler's? A. Yes.

Q. What percentage did you have in that combine?

The Court: Let me see if I understand you. He didn't come in until Hendler got out?

The Witness: Out, yes. Hendler got out and he come in.

The Court: You are sure of that?

The Witness: Yes.

* * * *

(635) Q. What percentage did you have in the combine, Mr. Facher? A. I had around 8 percent.

* * *

Q. Do you know what percentage Rutkin had? A. No, not exactly.

Q. Well, was it talked about?

Q. Among the partners? A. Yes.

Q. Well, in talking about it among the partners, what percentage was it said that Rutkin had?

Mr. Tyne: I object, unless the persons present are identified and anyone who spoke is identified.

The Court: Who were the persons who spoke about his percentage?

The Witness: We had so many I couldn't remember who was talking. I know he had a percentage.

The Court: How do you know he had it? Did you have any books?

The Witness: No, we didn't have—we used to (636) have a sheet of paper. After one transaction was settled up, if you had money coming or overdrew, it would show.

The Court: Who did the dividing?

The Witness: Well, if I had drawn money, I did the dividing.

The Court: What do you mean?

The Witness: Sometimes I gave it to Mr. K. Sometimes if Mr. Holtz went to Nova Scotia to collect an account of 50 or 75 thousand.

The Court: Who would give him that? Did you have 50 or 75 thousand lying around?

The Witness: Yes, we had it in the vault.

The Court: Whose vault?

The Witness: I had a vault, I had a couple of vaults. K had a vault and Davis had a vault.

The Court: You and Kanengiser and Davis had vaults?

The Witness: Yes.

The Court: And if Holtz needed 50 or 75 thousand, did you take it out of the vault?

The Witness: Well—

The Court: And give it to him?

The Witness: Yes.

The Court: How often did you divvy up?

The Witness: Well, every month or two months.

The Court: Who would do the dividing?

(637) The Witness: All of us. We wouldn't have to be all together; if either one had money he presented it to us and if I was there—

The Court: Who was there when you divided it?

The Witness: When we got it?

The Court: Yes.

The Witness: Well, Reinfeld took some money; many times I got an order from Reinfeld to send $100,000 to Montreal, I would send it.

The Court: Were you the treasurer? Did you have all the money?

The Witness: No, not all the money. It is according to how I collected it; whether I used to collect it in New York, Newark, some people.

The Court: Did you have enough to be able to give $100,000 to Reinfeld, and if Holtz needed 75,000 you would give Holtz 75,000 out of your vault?

The Witness: Sometimes Reinfeld took money, sometimes Holtz took money and as merchandise came in, it accumulated, and the gain money.

The Court: You say you divided about every month or two.

The Witness: Yes, we left certain working capital.

The Court: Well, who would have the money that (638) was divided?

The Witness: The bulk money?

The Court: The money, the money.

The Witness: As I say, I had some, Mr. Kanengiser had some, Harry Davis had some.

The Court: Well, now would you put that all together and divide it?

The Witness: Yes, we figured out and divided it.

The Court: And to whom would you give it?

The Witness: To who it was coming. I don't know who it was coming to. To Mr. Reinfeld, to their group; some to our group.

The Court: Well, now, who were in the Reinfeld group?

The Witness: The three brothers, the brother-in-law and another brother-in-law, Susskind. There was some 10 percent on the top which we didn't know and Mr. Reinfeld used to take that. We didn't know who that was.

The Court: Well, I don't know; there must have been some system because I thought bootleggers were smart. If they just threw money around that way, that wasn't—go ahead, Mr. Van Riper.

Q. Now, Mr. Facher, let's see if we can get this straightened out. First of all, you said Reinfeld would tell you to send $100,000 to Montreal. Would you do it? (639) A. If I had it or Harry Davis would give the balance or—

The Court: Wait a minute. Who else would give the balance?

The Witness: Mr. Kanengiser.

Q. Now, what was that money for that was sent to Montreal? A. Merchandise.

Q. Liquor? A. Yes.

Q. What was the money for that you provided? A. Equipment for the boats to bring in the merchandise and to pay off the expenses.

Q. Now you are talking about splitting up the money. I suppose there came a time when you split up some profits. A. Yes.

Q. You did have profits? A. Yes.

Q. Now, what the Court was asking a minute ago was when you came to figure up the profits, would somebody figure up how much profit there was? A. Yes, we all sat down.

The Court: Now wait a minute. You said "we all would sit down."

The Witness: Kanengiser, Reinfeld and Lentz, some from Davis group.

The Court: The groups would each be represented, (640) is that it?

The Witness: Yes.

The Court: Then each of you would tell how much you made?

The Witness: How much we sold. If I sold 2,000 cases, I would collect for it, or if I collected for instance $100,000, I had $100,000 there.

The Court: And the others would do the same thing?

The Witness: The same thing.

The Court: And then you would find out how much money had to be divided?

The Witness: Yes.

The Court: And it would be divided among the representatives?

The Witness: After it was paid off, the expenses, some was divided, some was left.

The Court: For working capital?

The Witness: Yes.

The Court: Now, was it divided to the representatives of the group or the individuals?

The Witness: Representatives of the group. If individuals were there, they got it themselves. If not, the group.

The Court: And you knew what percentage each one was to get, is that right?

(641) The Witness: Yes.

The Court: Where were these meetings held?

The Witness: Your Honor, we had so many offices; we had an office in Military Park, an office in the Industrial Building, an office in the Lincoln Hotel.

The Court: You mean in Newark here?

The Witness: Yes.

The Court: That is where most of the work was done?

The Witness: Yes.

The Court: All right.

By Mr. Van Riper:

Q. Now, let me ask you, Mr. Facher, how many groups were there? You talk about the groups—all together, in the whole combination? (642) A. There were so many groups. At the start Zwillman wasn't with us.

Q. From the start Zwillman wasn't with you? A. No.

Q. Did Zwillman afterwards come in? A. Yes.

Q. Did they have a Zwillman group? A. Yes, sir.

Q. Do you know about when Zwillman came in? A. I can't recollect.

Q. Now, what group was Rutkin a member of? A. Of our group.

Q. Of your group. You mean the Reinfeld group? A. Yes.

Q. And who was the head of that group? A. Who was that?

Q. Who was the head of that group? A. Joe Reinfeld.

* * *

The Court: Let me try to get this in my mind, anyhow. You spoke before—before Zwillman's group came in you spoke of the Kanengiser group and the Reinfeld group and the Davis group.

The Witness: No, Davis wasn't in. Davis came in (643) with Zwillman.

The Court: Davis came in with Zwillman. Well, before Zwillman—

The Witness: Yes.

The Court: You had—

The Witness: Only our group.

The Court: The Kanengiser group?

The Witness: The Kanengiser group and the Reinfeld group.

The Court: And the Reinfeld group.

The Witness: That's all.

The Court: Two groups.

The Witness: Yes.

The Court: Then the Zwillman group came in.

The Witness: Yes.

The Court: So you had three groups, is that right?

The Witness: Well, if you want to call it this way, because we split—

The Court: No, I'm not calling anything. You split it?

The Witness: Your Honor, we split that time 50-50.

The Court: Oh. Then the Kanengiser and the Reinfeld group combined.

The Witness: Combined, yes.

(644) The Court: And had 50%?

The Witness: Yes.

The Court: And the Zwillman group came in later.

The Witness: Yes.

The Court: And had 50%.

The Witness: That's right.

Q. So then do I understand from that, Mr. Facher, that the Kanengiser group became part of the Reinfeld group? • • • A. Yes, on the 50%.

Q. Yes. Now then, when it came time to divide up these profits who would decide how much profit was going to be paid out? A. Well, it wasn't—we would set down together and say it was a hundred thousand dollars or two hundred thousand dollars, then we split it. It wasn't a regular meeting like we have now, with a corporation or—

Q. You had a corporation meeting then? A. No, we didn't.

Q. Except it wasn't a corporation? A. It wasn't minutes.

Q. Now then, how would it be determined how much money each man was to get? On what basis? A. (No answer.)

(645) Q. He didn't have any shares of stock, did he? A. No.

Q. What did he have? A. Well, we would know percentage what he had.

Q. All on a percentage basis? A. All on percentage basis.

The Court: On what did the percentage depend?

The Witness: Well, we had about 32% from the start—

The Court: What did that depend on?

The Witness: It depended on the profit and their own investment.

The Court: No, no. Was the 32% dependent on the investment?

The Witness: Yes, yes. And when we start, when we organize, we invested so much—

The Court: You invested so much?

The Witness: Yes.

The Court: And that was 32½%?

The Witness: That's right.

Q. Now then, what percentage did you personally have? A. Well, I had 8%.

* * *

Q. Now then, do you remember when Rutkin came into the (646) combine? A. (No answer.)

Q. I don't mean the date. A. I remember when he come in.

* * *

Q. Who brought him in? A. Well, it was going on for a few months, this other friction with George Hendler, something was going on which I don't know, and Jim Rutkin, I was told, will take Joe Hendler's place.

Q. Who told you that Jim Rutkin would take Hendler's place? A. Well, one of the Reinfelds. They came in. I don't remember which.

Q. One of the Reinfelds. Now, what was Joe Reinfeld's job in the combine? What were his duties? A. Joe used to buy merchandise.

Q. Buy liquor? A. Buy liquor; and he had connections here, and when it came in he was busy.

Q. What do you mean he was busy, when it came in? A. He was on the docks; some connections he had here to straighten out. There was a lot of work.

Q. And Joe Reinfeld was the man who had connections?
(647) A. Yes.

Q. Now, what was Rutkin's job in the combine? A. Rutkin was with Mr. Reinfeld on the docks and he would see the goods should be delivered and it should go through on the road, and sold some goods and collected some money.

Q. Now, do you remember when the time came when the combine broke up, when prohibition was repealed? Do you remember that time? A. Yes.

Q. Now then, do you remember some discussion at that time as to whether or not Rutkin owed the combine $35,000? A. No, I don't remember. I wasn't there that time in the meeting.

Q. Did you ever know of any member of the combine being forgiven any amount which was due the combine? A. Yes, yes.

Q. Who was forgiven? A. I was forgiven, too, which I couldn't collect. You couldn't collect a hundred percent from nobody, especially when the end came; a lot of them refused to pay and you couldn't collect it.

Q. You were forgiven, too? A. Yes, I was forgiven, too, so much.

Q. Although you were forgiven something at the end, did you continue to have an interest in the combine's assets? (648) A. Yes, sir, yes, sir.

Q. Now, do you recall when the combine ended how much money there was on hand? A. It was close to half a million dollars.

Q. Close to half a million. Does $469,000 refresh your recollection as the figure?

* * *

A. It does.

Q. Now, do you know what became of that figure, close to a half a million dollars? A. It was supposed to be working—to organize Browne Vintners, when it was organized,

Q. Now, who owned that half a million dollars as far as groups are concerned? A. The whole group.

Q. The whole group. By that do you mean both groups? A. Yes.

Q. The Reinfeld group and the Zwillman group? A. That's right.

Q. And how did they own it? On a fifty-fifty basis? A. Fifty-fifty basis.

Q. I see. Now then, you heard some talk, did you, about (649) the organization of Browne Vintners? A. Some of it.

Q. I mean you were told that there was going to be a company, Browne Vintners? A. That's right; because we paid expenses—before the repeal came yet, we paid, the combine paid, expenses for going to Europe to get agencies.

Q. They paid the expenses of whom? A. Out of the combine.

Q. Whose expenses did they pay, Mr. Facher? A. Mr. Reinfeld, Mr. Seaman, Mr. Rutkin, and somebody else; I don't remember exactly who it was.

Q. Rutkin— A. I don't remember who else it was.

Q. Now, for what purpose did those gentlemen go to Europe? A. To get agencies for merchandise.

Q. For the new company that was to be formed? A. Yes, yes.

Q. And that was discussed, was it? A. Yes.

Q. Beforehand. Now then, did you still keep your interest in the $469,000? A. Yes, sir.

Q. When the Browne Vintners was formed? (650) A. Yes, sir.

Q. And what were you supposed to have for that interest? A. I was supposed to have some stock in Browne Vintners.

Q. Now, did you ever get the stock in Browne Vintners? A. No.

Joseph Facher—for Defendant—Direct

Q. Were you ever told anything about the stock in Browne Vintners? A. No.

Q. Well, did you ever have a discussion with Reinfeld about your stock? A. I had one.

Q. What were you told that was being done with your stock? A. That I couldn't—that they wasn't in position to have it in my name and he had it fronted and he will have it fronted for us.

Q. Who told you that, Joe Reinfeld? A. Yes, sir.

Q. Now then, some time after Browne Vintners was formed do you remember whether or not they increased their capital stock? A. I was never to a meeting, Mr. Van Riper.

Q. But do you remember—how much did they have to start with? A. Close to a half million.

(651) Q. Now, was there a time when that was raised to a million?

Mr. Tyne: Now, I object, if the Court please. He said he didn't know, he was never to a meeting.

The Court: Do you know anything about the—?

The Witness: That they were going to associate, that the corporation—

The Court: But nothing about yourself.

The Witness: No.

The Court: Well, let me ask you about this half million. That belonged to both combines?

The Witness: Yes, sir.

The Court: Zwillman and—

The Witness: That's right.

The Court: —the Reinfelds, Kanengiser group.

The Witness: Yes.

Q. So that your 4% was 4% of the whole, almost half a million. A. Half a million, yes.

Q. Is that right? A. Yes.

The Court: You say 8%?

The Witness: It was 8% before the other combine came in.

The Court: On the $469,000?

(652) The Witness: No, no.

The Court: What?

The Witness: It was 4% of that.

The Court: It was 8% of what?

The Witness: 8% I had before Zwillman came in. When Zwillman took over, 50% of ours became 4%.

The Court: Well, how much did you have at the time the combine ended?

The Witness: Close to half a million dollars.

Q. Well, how much of that did you have, 8 or 4?

The Witness: Four.

Q. Do I understand that what you are saying is this, that you had 4%— A. Yes.

Q. —of the total assets? A. That's right.

Q. Of the combine? A. That's right.

Q. At the time that it ended? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. Do you happen to recall what that would be, about, in dollars, Mr. Facher? A. Well, I don't remember exactly. I know it was figured (653) out. I was once at Mr. Reinfeld's house on Vassar Avenue, and Mr. Levin—

Q. Speak a little louder, please. A. I was in Mr. Reinfeld's house on Vassar Avenue and there was given me a slip that I owe around $1200 or $1300, I don't remember

exactly; it was in that neighborhood, over a thousand dollars roughly, to $20,000.

The Court: When you gave that, it made it $20,000?

The Witness: Yes.

Q. In other words, to bring your interest up to $20,000 you had to put in around $1200, is that right? A. Twelve or thirteen. I know it was over a thousand dollars, I don't remember exactly.

Q. Well, did you pay that amount, a thousand or twelve hundred dollars? A. Yes, sir.

Q. And to whom did you pay it? A. To Mr. Reinfeld.

Q. In cash? A. Yes.

• • •

Q. After you paid that $1200, or whatever it was, in cash, then your share was how much in dollars? (654) A. $20,000.

Q. And how much in percentage was it still? A. It should be 4%.

Q. 4%. And that would be 4% of your group, or was it 4% of the whole? A. It was 4% of a half million dollars.

Q. 4% of a half million dollars? A. That's right.

Q. So that if your group had a half a million dollars you had 4% of it? A. 4%, that's right.

Q. Now then, did you talk with any of the other partners at that time, to know whether or not they were putting in their money? A. No.

Q. You did not talk to any of the other partners? A. No.

Q. Did Rutkin continue to be a member or partner of the combine after the combine broke up? A. To my knowledge it was.

Q. Now then, did there come a time when you borrowed any money from Mr. Reinfeld? A. Yes, sir.

Q. Do you know about when that was? A. I don't remember exactly.

(655) Q. Well, about? A. It was around 1940 or so.

Q. Around 1940. Well, that was before Browne Vintners was sold? A. Yes.

Q. Now, at that time did you talk with Mr. Reinfeld about your stock? A. Yes, sir.

Q. And what did you say to Mr. Reinfeld about your stock at that time? A. That I went in a new venture, in business and I was short of money; that I should put up money, or, if not, I would be out. We had a chain of roller skating rinks, and I was short of money and it was a question of being out or in; and I asked Mr. Reinfeld, I said "I would like to get my $20,000 out of it, I haven't got any stock, I haven't got anything to show. Now I have an opportunity to go in something which I think is very good. Please give me some money." So Mr. Reinfeld says, "We have been so long in this and the concern is for sale, you will make money. Why should you leave us? We are all in the thing." Anyway, I tried my best, which Mr. Reinfeld give me $10,000, which I got, and made a big success with it.

Q. Now, wait. That's fine. I understand you to say to us that he said "We have been so long together, stay in (656) with us, the concern is for sale, you will make money." A. Yes.

Q. Now, you say you got $10,000 from this? A. Yes, sir.

Q. Was that for a sale or a loan? A. No, I said "Joe, give me $10,000. I need it very bad. I will give you a note. You got the stock. I have nothing to show, and I'm still good for $10,000," which he gave me $10,000.

Q. And did you sign a note for it? A. Yes, sir.

Q. And then what happened? Did you pay it back? A. I did.

Q. And what happened before you paid it back? A. I didn't want to pay because I said I am entitled to the money. I said Browne Vintners was sold, I'm entitled to a profit, at least my investment give me back. Anyway, that was going on, and I went up to Mr. Cohen and Mr. Popik, and I didn't pay it right away, till I was subpoenaed, and I asked people—the first thing, I didn't want to bring up—

Q. What do you mean, until you were subpoenaed. What do you mean about subpoenaed? A. To court—

The Court: You mean they started suit against you?

(657) The Witness: Started suit, for the $10,000.

Q. And after you were sued you paid the $10,000? A. I asked my accountant and I asked people. They said "You got nothing to show," and I didn't want to bring up anything; as I said, I wanted to forget about it. I made a success of something else and I wanted to forget about it, so I paid the $10,000.

Q. You heard when Browne Vintners was sold, did you? A. Yes, sir.

Q. Did you ever get any money for your stock in Browne Vintners? A. Not a penny.

Q. Did you go to Mr. Reinfeld about it? A. Yes, sir.

Q. Did you ask Mr. Reinfeld what happened to your money? A. Yes.

Q. What did Mr. Reinfeld say? A. They had so much expenses that I owe money yet on it.

Q. Did he sue you again for any more money? A. No.

Q. All right. Now you remember Chick Callahan? A. Yes, sir.

Q. Was he in the combine? (658) A. He was.

Joseph Facher—for Defendant—Cross

Q. Now, did your group buy out Chick Callahan's share? A. Yes, sir.

Q. You knew about that, did you? A. Yes. My brother-in-law took care of that.

Q. Do you know how much in percentage Callahan had? A. I think 1½%.

Q. 1½%.

• • • •

Cross examination by Mr. Tyne:

Q. How much did you get for Chick Callahan's share? A. I don't know.

Q. What? A. I don't know.

Q. You don't know? A. No. I don't remember.

Q. Well, you bought out Chick Callahan's share at the time the combine was dissolved, didn't you? A. No.

Q. In 1933 or '34? A. No. The combine was together when he went out of it.

Q. Was it before Browne Vintners was organized? A. I think so.

Q. And you bought out Chick Callahan's share? A. (659) Yes, sir.

Q. Do I understand you to say that you had Chick Callahan's share also in Browne Vintners? A. No. I don't know where it happened. It disappeared from the figures.

Q. Well now, you bought out Chick Callahan's share, is that so? A. Yes, sir, yes, sir.

Q. Who did you buy it from? A. We bought it out when we had a meeting. He wanted to step out or he wasn't wanted any more in the combine. He was paid out. I don't remember how it was paid out.

Q. You don't remember how it was paid out? A. No.

Q. And you don't know when, is that so? A. No.

Q. You don't know how much you got for it? A. How much we paid him?

Q. Well, how much did you pay him? A. I don't remember; whatever it was worth when we was taking stock of what we had, equipment and so forth, and who got paid for it.

Q. And his share was assigned to you, is that right? A. To all of us.

Q. To all of you? (660) A. Yes, to my group.

Q. To Kanengiser group? A. Yes, sir.

Q. And Schneider? A. Yes.

(661) Q. And you don't know how much you got for it?

The Court: How much he got paid for it?

A. How much we paid for it?

Q. Paid for it; I am sorry. And can you fix the time when you bought out Callahan's share? A. No, I can't, I don't remember.

Q. Well, I ask you again, was it after Browne Vintners was organized? A. Way before Browne Vintners.

Q. Way before? A. Yes.

Q. Now, you said that you borrowed $10,000 from Mr. Reinfeld in 19— when? A. Around 1940, I think.

Q. Around 1940? A. Yes.

Q. And you said you asked him about your stock, is that right? A. I didn't ask him about his stock, I said "You have the stock," I was willing to take my investment out.

Q. Yes. A. $20,000. I didn't ask for the stock at that time.

Q. And notwithstanding the fact that you had $20,000 in Browne Vintners, you say you signed a note for $10,000? A. Yes, sir.

Q. And borrowed $10,000? (662) A. Yes, sir.

Q. And you never made any demand upon Browne Vintners or Reinfeld for the $20,000 when you were sued for the $10,000 you borrowed from Reinfeld? A. Well, yes, I did demand.

Joseph Facher—for Defendant—Cross

Q. Did you make the demand? A. Yes, sir, just personal.

Q. Where and when? A. In Mr. Popik's office.

Q. Did you ever make a demand in writing? A. No, sir. We didn't have anything in writing.

Q. Well, now, there was no reason for concealing this in 1940? You weren't in the bootlegging business as you were prior to 1934? A. No, only it was organized, Browne Vintners was organized when bootlegging was still going on.

Q. When did you borrow this money in 1940? A. I don't remember.

Q. Was it the early part of the year, the middle of the year, or the latter part? A. I don't remember; I think it is the early part.

Q. Yes. And you knew that they were negotiating for the sale of Browne Vintners? A. Yes, sir. Yes, sir. That is the reason I pleaded with Mr. Reinfeld that he should loan—he didn't want to give (663) me the whole fifty I needed and he gave me $10,000.

Q. He gave you $10,000? A. Yes, sir.

Q. He didn't give it to you, he loaned it to you, didn't he? A. He loaned it to me, I picked up a check in Mr. Cohen's office for $10,000.

Q. Yes. And you executed a note back to Mr. Reinfeld, personally? A. Yes, sir. It was my suggestion.

Q. Yes. Oh, your suggestion? A. Yes, that he has the stock and I was desperate to get some money.

Q. Did you ever serve any notice on any of the stockholders or board of directors that you held stock in Browne Vintners? A. No.

Q. You did not? A. No.

Q. At no time? A. No.

Q. Did you ever attend any of the meetings? A. No.

Q. Did you ever attempt to attend any of the meetings? A. No.

(664) Q. Did you ever engage in any activity connected with Browne Vintners? A. No.

Q. Were you present when it was organized, Browne Vintners? A. No, no.

Q. So you don't know anything about Browne Vintners at all, is that right? A. What was going on inside, no.

Q. When did you first learn that Browne Vintners had been sold? A. It was, I heard before Vintners sold, maybe it was going on about two years that Browne Vintners was for sale.

Q. Yes, two years. A. Two or three years.

Q. And did you know that it had been recapitalized? A. No.

Q. You did not? A. Only what I heard Mr. Kanengiser, my brother-in-law told me, he was approached to put in more money, which he didn't.

Q. He did not, is that right? A. Yes, but he was approached to put in more money.

Q. Were you approached to put in more money? A. No.

Q. I think you testified on direct examination that the (665) time you borrowed this $10,000 you wanted to forget about it, is that so? A. I wanted to forget the past, yes, and that is the reason I didn't want to sue. I paid it out, not at once, 25 and 50—I don't remember how—by checks.

Q. You were represented by a lawyer? A. No.

Q. You were not? A. No.

Q. At no time? A. Not when I borrowed the money; I paid it back.

Q. You didn't consult a lawyer about this so-called interest of yours in Browne Vintners? A. No, I didn't. I asked, well, business people advised me, "You signed a note, it is ridiculous if it comes to Court, you can't deny it. Pay it and forget about it."

Q. Sure. On the note, you couldn't deny that, but you didn't make any offset or any counterclaim for this $20,000 you say you had in Browne Vintners? A. I did.

Q. In Court? A. No, not in Court.

Q. Well, did you consult a lawyer about that defense? A. No, no.

Q. You did not? (666) A. No.

Q. You didn't think it was necessary? A. No.

* * *

Q. You just went ahead and paid the note? A. Yes, sir.

Q. Now, you said that the defendant Rutkin was a partner in the bootlegging combine? A. Yes, sir.

Q. And I think you testified, if I understood you correctly, that he came in when Hendler went out? A. Right.

Q. When was that? A. It was in the '30s, I think.

Q. In the '30s? A. Yes.

Q. Now, what interest did Hendler have? A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. Well, Hendler had an independent interest, didn't he? A. Well, we all had an independent interest when it comes to it, only he was alone and we were four together so we had it together, we figured it our group.

(667) Q. Well, was Hendler in with your group? A. No, he was independent.

* * *

Q. So when Rutkin came in and took over his percentage, he, Rutkin, was independent, is that right? A. Yes, sir.

Q. And you don't know what Hendler's percentage was in the combine? A. I don't remember, sir.

Q. Do you remember what Rutkin's percentage was when the bootlegging combination dissolved? A. When it dissolved? No.

* * *

Q. Well, then, you, as a cashier, paid out monies over the years, didn't you? A. Yes, sir, quite some.

Q. How much money did you pay out to Rutkin when you divvied up from the time he came in in 1930 until you dissolved, about 1933? A. We never kept books, we only had a sheet of paper and slips and he took 10,000 or 15,000, and sometimes he owed to the combination money and sometimes it was coming to him, owing money. It was always left—

(668) Q. Are you finished? A. Yes.

Q. Do you know whether or not Rutkin paid in any money after he came in, after Hendler got out? A. I don't remember.

* * *

Q. Did he pay any money to you? A. No.

Q. You were the cashier, weren't you? A. I wasn't the cashier, no.

Q. I beg your pardon? A. I was part of the cashier.

Q. Part. You, Kanengiser, and Joe Davis? A. Harry Davis.

* * *

Q. Now, who is Joe Davis? A. Brother of Harry.

* * *

Q. And they were the front men for Zwillman and Stacher, weren't they? A. I don't know.

Q. Well, now, you say you don't know. (669) A. I don't know if they was front men or not.

Q. Well, did they represent Zwillman and Stacher at these meetings? A. Zwillman was there, too, when it happened.

Q. Zwillman attended, Abner Longie Zwillman attended many of these meetings? A. That's right.

Q. He was known as Longie at that time? A. I don't know.

Q. Still is, I guess; and Joe Stacher? A. Yes, Doc.

Joseph Facher—for Defendant—Cross

Q. Now, is he known as Doc Rosen? A. Yes.

Q. And he attended meetings too, didn't he? A. Yes, sir.

Q. And they participated in the dividing up of the profits, didn't they? A. Yes.

Q. Now I want you to tell us who the individuals were that comprised this bootlegging enterprise when the Zwillman group came in. I think you said there were two factions three Reinfelds, the Kanengiser and the Zwillman-Stacher group. A. Yes.

Q. Now, will you tell us all of the individuals that (670) comprised that group or those groups? A. To my knowledge Stacher, Doc, Zwillman.

Q. Otherwise known as Joe Stacher? A. Joe Davis, Harry Davis, Eddy Seamon and Harry Seamon, to my knowledge.

The Court: That was the Zwillman group?
The Witness: Yes.

Q. Now, before you go any further, did all those individuals attend the meetings during these bootlegging operations? A. Sometimes.

Q. From time to time? A. Yes.

Q. Would Rutkin attend those meetings, too? A. Yes, he was there.

Q. When Zwillman and Stacher were present? A. I don't remember exactly, only he was by the meetings.

Q. Then you said there was your group composed of four individuals and then there was Rutkin who had taken over Hendler's interest? A. Yes.

Q. And what was Hendler's interest, do you know? A. I don't remember.

Q. Isn't it a fact that at that time when Rutkin came in, he just declared himself in on the combine? A. I don't know.

* * *

Joseph Facher—for Defendant—Cross

(671) Q. Well, didn't he— A. Something was going on which until today I don't know; they were not on good terms in the office; they were going on for a couple of months, maybe a few weeks or a couple of months and one day in the week, I remember it was in the Military Park Building we had an office, and we were told Niggy Rutkin is our partner.

Q. Now, wasn't Rutkin in before then? A. No, not with us.

Q. And he wasn't in the combine at all prior to the time Hendler came in, is that your testimony?

The Court: The time Hendler got out.

A. Until Hendler got out, he wasn't there.

Q. The defendant you call Niggy Rutkin? A. Yes, sir.

Q. Was that a nickname of his? A. Yes, sir.

Q. James Niggy Rutkin, is that right? A. That's right.

Q. You are sure that he wasn't in before Hendler got out? A. Not to my knowledge; never heard of him.

* * *

(672) Q. You divided up the proceeds and the profits, didn't you? A. We all did.

Q. You all did. Now, wasn't Rutkin there participating in the profits and dividing up prior to the time Hendler got out? A. After George Hendler got out.

Q. After. You are sure of that? A. Yes, sir.

Q. Now, you talked about being given a slip of the amount that was received by each individual partner when the division of the profits—the time of the breaking up of the bootlegging operations came about, is that right? A. Yes.

Q. You got a slip? A. Yes.

Q. Do you have that slip? A. No.

Q. Didn't you save it? (673) A. What for?

Q. I don't know. I am not answering questions. You know better than I. A. The less records we kept, the healthier we were.

* * *

Q. Mr. Facher, you have told us who comprised your group and the Zwillman-Stacher-Davis group and have also told us that Rutkin was there. Who comprised the Reinfeld group? A. As I say, Joe, Sam, Saul, and Lou Holtz and Susskind.

Q. Is that all? A. That's all from what I know.

Q. Are they all the ones to whom you paid off from time to time? A. Yes, sir. I didn't pay individually; to one of them.

Q. To one of them? A. Yes.

Q. You paid to Rutkin, you paid directly to Rutkin, is that right? When you paid to Reinfeld, you paid to Rutkin? A. Not all the time.

* * *

Q. Well, did you pay to Rutkin? (674) A. Sometimes.

Q. Well, sometimes? A. Sometimes he took money.

Q. Well, did anybody else take any money for him at any time? A. No, no, no.

Q. Now, you know how much you put into this bootlegging enterprise, don't you? A. No.

* * *

The Court: You don't know how much you put in it originally?

The Witness: Your Honor, it started very small. It wasn't twenty, it wasn't thirty, it was a very small amount from the start. As we grew—

The Court: Do you know how much you got out of it?

The Witness: I got out quite some money out of it through the years.

Q. How much? Can you tell us within $25,000 how much you got out of it? A. No.

Q. But it was a substantial amount, wasn't it? A. Yes, sir, over the years.

Q. And do you know how much Kanengiser put in? (675) A. No.

Q. Do you know how much Schneider put in? A. No.

Q. Do you know how much the Reinfelds put in? A. When we were together ourselves, Kanengiser, Schneider, Lentz,—we were together ourselves in the early part; we got together, maybe they got us—we had merchandise and stock and that is how we got together.

Q. How was that paid? A. They paid us or we paid them. We took inventory every time we got together.

Q. Now, you say you took inventory? A. Yes.

Q. What did you take inventory of? A. Maybe we had a couple of trucks, merchandise to work with.

Q. And where did you take inventory? A. At the warehouses where the merchandise was.

Q. And you made a record of what, of the assets of the corporation? A. Just to straighten out our figures.

Q. Straighten out your figures? A. Yes, there was coming to them money—I don't remember how it was taken care of only just we got together. It wasn't big figures that time.

Q. So it was on the basis of an inventory that you made the (676) distribution and the payoff of the combination, is that it? A. No, that was decided when we got together, how much interest we had and how much they had.

Q. Then you pooled your inventory with others? A. Yes, sir.

Q. And then did you take the overall inventory of what the combine had? A. I didn't understand that.

* * *

Joseph Facher—for Defendant—Cross.

Q. Well, in taking the inventory you did keep records? A. We kept records what we have, but we didn't know how much merchandise we had or—

The Court: Why did you keep the records?

The Witness: Well, like Mr. Schneider kept a record of the merchandise he had, a sheet of paper on how much he had, and if there was 2,000 cases or 500 cases, this is the price for it and this is what he turned in, and the same when we got together on the other side.

(677) Q. And you testified that you paid Mr. Reinfeld a thousand dollars to go up to Canada to buy merchandise, is that right?

The Court: Oh, no, no, no. A hundred thousand.

A. A hundred thousand.

* * *

Q. And that was used to purchase merchandise, liquor? A. Yes.

Q. That was brought in via the ships and unloaded down along the Jersey coast? A. Yes, sir.

Q. Now, I don't know whether I asked you this question: Do you know how much of an interest—strike it out—do you know how much Hendler put in this bootlegging enterprise? A. Nope.

* * *

Q. Do you recall that when you repaid the $10,000 loan that you obtained from Reinfeld that you also repaid him an additional $4500 that you owed him? A. No.

* * *

(678) Q. You did not? A. Nope.

Q. You mean you don't recall? A. I didn't owe any other $4500.

Q. Well, did Mr. Reinfeld pay you $4500? A. Yes, I think he did.

Q. When was that? A. By the end of prohibition.

Q. Yes, when you came to the split-up? A. Yes.

Q. And you were paid—it was more than $4500, wasn't it? It was $6500, wasn't it? A. I don't remember. And I will explain whose money that was: His brother—

Q. Before you explain, you did receive it? A. Yes, sir.

Q. And that came at the split-up of the partnership? A. Yes.

Q. And that was at the time that you were liquidating the partnership? A. Yes.

Q. And distributing the proceeds and the profits? A. Yes.

Q. Your answer is what? A. Yes, sir.

(679) Q. All right.

* * *

Redirect examination by Mr. Van Riper:

Q. Mr. Faeher, you wanted to explain about that $4500; what was it for? A. Sammy Reinfeld took some money from me, he asked for money, and that he was overdrawn, and he paid me back.

Q. That is what it was? A. Yes.

Q. It was just repayment of a loan to you? A. Yes, sir.

Mr. Tyne: From whom?

Mr. Van Riper: Sammy Reinfeld.

Q. That is Joe's brother? A. Yes.

Recross examination by Mr. Tyne:

Q. Let me see, now, Sammy Reinfeld was overdrawn and he repaid it to you? A. Yes, sir.

Q. Personally? A. No, Joe paid me.

Q. Paid you? A. Yes, sir.

(680) Q. Personally or as cashier for the combine? A. No, Joe paid me.

Q. Joe paid you, personally? A. Yes, sir.

Q. That was a representative of the combine? A. No.

Q. And that was money coming to you, wasn't it? A. Yes, sir.

Q. And because Sammy Reinfeld was overdrawn? A. Yes, sir.

The Court: Did Sammy borrow it from you?

The Witness: He took some money; if I needed it, I took some money.

The Court: Well, why should he pay it back to you instead of the combine?

The Witness: Because I had to make good a certain amount to the company which I was short.

The Court: Did he get the $4500 from you?

The Witness: Yes, sir.

The Court: And that was money that you had to account for to the combine?

The Witness: Yes, sir.

The Court: So he had to pay it back to you?

The Witness: Yes.

By Mr. Tyne:

Q. And was that the practice, to pay back money that was (681) overdrawn for loans that had been made? A. Sometimes.

Q. Sometimes? A. They paid it back sometimes.

Q. They paid it back? A. Sometimes, in settlement.

* * *

Joseph Davis—for Defendant—Direct

JOSEPH DAVIS, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Davis, what is your business, please? A. Liquor business.

Q. Whereabouts? A. Manhattan.

Q. Were you at one time an officer of Browne Vintners? A. I was.

Q. Will you please keep your voice up a little bit? What office did you hold there, Mr. Davis? A. Secretary.

Q. And do you know for how long a period you held it? A. Three years, three or four years.

(682) Q. And what years were they, do you know? A. I believe '37, '38, '39, '40.

Q. All right. It was in '40 that the business was sold to Seagram's? A. That is right.

Q. Now, were you associated with Browne Vintners before '37 in some other capacity besides secretary? A. Yes.

Q. In what capacity, Mr. Davis? A. Sales—an executive and sales.

Q. When did your association with Browne Vintners start? A. From its inception.

Q. And did you have stock in Browne Vintners? A. I did.

Q. And that was legitimate stock of your own? A. Yes, sir.

Q. And you knew Reinfeld, of course? A. I did.

The Court: You mean it was in your own name?

The Witness: Yes, sir.

The Court: Nobody fronted for you?

The Witness: Nope.

Mr. Van Riper: This is a phenomenon, your Honor.

Q. And you didn't front for anyone else? A. No.

(683) Q. You said you knew Reinfeld? A. I did.

Q. What position did he occupy in the company? A. He was the president.

Q. And before he became president was he active in the company? A. Yes.

Q. And during Reinfeld's connection with the company who was the directing head of the company? A. Reinfeld.

Q. Whether he was president or not? A. Right.

Q. You know Rutkin, do you? A. I do.

Q. You have known him for some time? A. Yes.

Q. Now, while Reinfeld—while you were with Browne Vintners did Rutkin used to come to the Browne Vintners' offices? A. Yes, sir.

Q. Have you seen him there on many occasions? A. Yes.

Q. And how often would you think you saw him there? (684) A. Quite often.

Q. And what would he be doing on the various occasions when you saw him there? A. Well, he'd be going around the office; I don't know exactly what he was doing, but he was with the company at one time.

Q. Now, how do you know he was with the company, Mr. Davis? A. He was employed by the company.

Q. Is that the time he went to Chicago? A. That's right.

Q. Now, outside of that did you see him there on other occasions, also? A. I did.

Q. Did you see him in with Mr. Reinfeld? A. I did.

Q. Did you see him in other offices in the suite besides Reinfeld's private office? (685) A. I did.

Q. And I suppose you had conversations with him there? A. I did.

Q. Mr. Davis, did you ever, at the suggestion of Mr. Reinfeld, call up a whiskey broker in New York, either a

Mr. Motzman or a Mr. Klein, and ask him the price of whiskey so you could determine what price to pay Reinfeld for some whiskey that he personally owned? A. I did not.

Q. Was there ever a time when Mr. Reinfeld told you that he had twenty-five or thirty thousand barrels of whiskey of his own, bulk whiskey, and that he was going to sell it to the company for less than the market price? A. No.

Q. You never did. All right. Now, do you recall when the company was sold in 1940? A. I do.

Q. Just prior to the time it was sold did you attend a meeting at which Mr. Reinfeld was present? A. I did.

Q. And where did that meeting take place, Mr. Davis? A. Park Central Hotel.

Q. In whose apartment? A. My brother's.

Q. Your brother was a stockholder, also? (686) A. He was.

Q. (Continuing) Of Browne Vintners? A. Yes, he was.

Q. Who asked you to come to the meeting at the Park Central? A. Mr. Rutkin.

Q. And who was at the meeting? A. Mr. Zwillman, Stacher, Mr. Reinfeld, Mr. Rutkin, my brother and myself.

Q. Six of you, right? A. I guess that's right; six.

Q. Now, was the sale of Browne Vintners discussed at that time?

Mr. Tyne: Let me have the time fixed, Mr. Van Riper.

Q. Can you fix the time with any degree of certainty, Mr. Davis? A. During the year 1940.

Q. About how long?—

The Court: The early part of the year, middle of the year or latter part of the year?

The Witness: The middle of the year, I believe, or towards the latter part of the year.

Q. Can you fix it with relation to the time when the company was actually sold? The testimony here is that the company was actually sold on December 20th or December 30th. (687) A. I can't tell you exactly the day.

Q. Not exact date. A. It was some time during the year 1940, I believe.

Q. All right. Now, what did Mr. Reinfeld say at that meeting at which you and your brother and Zwillman, Stacher and your brother were present? What did he say about the sale of the company, Mr. Davis? A. He had an offer of selling the company to Seagram's for seven and a half million dollars and that he would be in favor of selling it for reasons that we needed some money, and we also were under some pressure of some kind, that he would like to sell the company.

Q. Did he explain what the pressure was? A. He didn't there, no.

Q. Now, then, did he ask anybody about what they thought? A. He asked whether we would be in favor of selling.

Q. Now, will you tell us how he did that when he asked you? A. Well, he simply asked—he virtually asked if I would be in favor of selling the company.

Q. Asked you if you were in favor? A. That's right.

Q. And then what did he say? A. (Continuing.) Then I said I would. He then asked my brother and then he asked Zwillman and Stacher and Rutkin.

(688) Q. He asked each one individually? A. That's right.

Q. And each one indicated their willingness to sell, didn't they? A. That's right.

Q. And then it was after that that the company was actually sold? A. That's right.

The Court: In this price of seven million and a half, there was a loan of five million concerned to banks, wasn't there?

The Witness: Yes.

The Court: So that the net would be what was left after payment to the banks.

The Witness: No, it would not figure out that way.

The Court: How would it figure out?

The Witness: Well, we had money in the company besides that five million dollars.

The Court: What?

The Witness: We have money in the company.

The Court: How much money did you have?

The Witness: I couldn't tell you, your Honor.

(689) The Court: But the seven and a half million included five million that had to be paid to the banks?

The Witness: That's right.

The Court: And then the balance would represent the rest of the interest of all parties concerned?

The Witness: Exactly. We had other money coming, too; we had money on the books of different outstanding accounts.

The Court: But that went into the new company?

The Witness: That's right.

The Court: The buying company?

The Witness: Yes.

By Mr. Van Riper:

Q. Well, isn't it a fact, Mr. Davis, that the seven and a half million provided, also, that Seagram, the buyer, was to assume all these liabilities? A. That's right.

Q. In other words, Browne Vintners was to get seven and a half million dollars free and clear of any liabilities? A. Yes.

The Court: Free and clear of the five million, too?

The Witness: All liabilities in the company.

The Court: Well, did that mean that you got the seven and a half million free and clear, you didn't have to pay back the banks, the Seagram Company had to pay the (690) banks the five million?

The Witness: I couldn't tell you that, your Honor.

Mr. Van Riper: Mr. Tyne and I are in agreement on that.

The Court: Fine.

Mr. Tyne: I will concede that the liabilities were eight million, were they not, Mr. Davis?

The Witness: I don't know the figures.

Mr. Tyne: Well, approximately.

The Court: Including the five million?

Mr. Tyne: Yes, sir, all liabilities were assumed by the purchaser and the seven and a half million was free and clear over and above the liabilities of approximately eight million dollars.

The Court: So that their price was, effectively, fifteen million?

Mr. Tyne: Fifteen and a half million dollars—sixteen million, I believe.

By Mr. Van Riper:

Q. By the way, Mr. Davis, do you recall the amount of A. I don't remember.

Q. Do you recall whether or not they increased their capitalization with which Browne Vintners was started? capitalization after they started? A. They did.

(691) Q. And do you recall how many times they increased their capitalization? A. Twice.

Q. Twice. Now, just one more question, if you will, please. Did you arrange with Mr. Reinfeld in December of 1942 to come to Newark to meet Mr. Zwillman? A. No, I did not.

Q. Did you talk at all with Mr. Reinfeld at or about that time about coming to Newark to meet Mr. Zwillman? A. No.

Q. (Continuing.) At Mr. Holtz' house? A. No, I don't know anything about it.

* * *

Cross examination by Mr. Tyne:

Q. You say you don't know anything about it? A. No, I didn't know anything about it.

Q. You didn't know anything about it? A. Only what I read in the newspapers here.

Q. Mr. Davis, do you have any recollection of making a call to Mr. Reinfeld on behalf of Mr. Zwillman? A. I did not.

Q. Isn't it a fact, Mr. Davis, that all during this period from the bootlegging days right down to the end of Browne Vintners you fronted for Abner Zwillman? (692) A. I never fronted for anybody.

* * *

The Court: Were you in the bootlegging combine, too?

The Witness: Well, I was part of it.

* * *

Q. Isn't that a fact, Mr. Davis? You have been sitting in court here the last couple of days, haven't you? A. I just got here five minutes before you called me up to the stand.

Q. You are commonly referred to as Joe Davis? A. That's right.

(693) Q. And your brother is Harry Davis? A. That's right.

Q. And you represented the Zwillman-Stacher combination? A. I did not.

The Court: Wait until the question is asked.

Q. (Continuing.) In this bootlegging operation in the sense that you were the representative of Stacher and Zwillman, were you not? A. I was not.

The Court: Were you present at any of the meetings of the combine in bootlegging days?

The Witness: A couple of their meetings.

The Court: And who else was present at those meetings when you were there?

The Witness: Well, there was quite a few, I think: Reinfeld, Zwillman, Rutkin, Stacher, Kanengiser, Facher.

Q. Do I understand you to say that you deny all association with Zwillman and Stacher during the bootlegging days?

Mr. Van Riper: If your Honor please, that is not what the witness said.

The Court: That is not what he said at all, he said he was there with Zwillman and—

Were you one of what is known as the Zwillman group?

The Witness: I don't know of any individual, (694) I know it was known as the Reinfeld Company or the Reinfeld group, as far as I know.

The Court: In the prohibition days I am talking about.

The Witness: That's right.

The Court: Wasn't Reinfeld in the bootlegging business before Zwillman joined it?

The Witness: He was.

The Court: Did you join at the same time that Zwillman did?

The Witness: I did.

The Court: Weren't you then part of what is known as the Zwillman group, which owned 50% of the bootlegging operations?

The Witness: I don't know what percentage, I know I came in about the same time.

The Court: Weren't you part of Zwillman's group?

The Witness: Well, I don't know how to call that, your Honor, if you call it a group.

The Court: Well, let's call it a combine; the word combine has been used.

The Witness: That's right, I came in the same time.

The Court: Were you a member of the Zwillman (695) combine?

The Witness: Well, if you want to call it that, I guess.

The Court: No, I have only heard it used here. It has been testified to here that the Reinfeld group owned 50% of this bootlegging operation and the Zwillman group owned 50%, is that so?

The Witness: I presume so.

The Court: Don't you know so?

The Witness: Well, I don't know for sure what percentage they had.

The Court: But there was a divide between the two groups.

The Witness: That's it.

The Court: And your proportion was the Zwillman group or combine?

The Witness: I came in at the same time they did.

The Court: Let's not be coy, and just speak frankly, you will be a whole lot better off.

The Witness: I am.

Q. Whatever the percentage was, you don't know whether it was 50% or not that the Stacher-Zwillman-Davis group got? Now, when you received any of the proceeds of the fund when there was a division, did you receive 50% of the entire fund? (696) A. I did not.

Q. Well, did you receive a particular percentage, yourself? A. I did.

Q. You did? A. Yes.

Q. Did your brother Harry Davis receive a particular percentage? A. He did.

Q. How much did you—what was your percentage? A. About 4%.

Q. About 4%? A. Yes, that's right.

Q. Of the 100%? A. I guess so.

Q. And what was the percentage of your brother's? A. The same.

Q. 4%, also? A. Yes.

Q. What was Stacher's percentage? A. I don't know.

Q. What was Zwillman's percentage? A. I don't know.

Q. Didn't you receive payments, for that faction, from Kanengiser and Facher? A. I did not.

(697) Q. (Continuing.) For the Zwillman-Stacher group. No.

Q. (Continuing.) And make disbursements? A. No.

Q. You did not? A. No.

The Court: May I ask you, Mr. Davis, how was your 4% figured?

The Witness: I don't know, they told me I had 4%.

The Court: Who told you you had 4%?

The Witness: I guess it was Mr. Reinfeld and Mr. Kanengiser.

The Court: In return for what?

The Witness: Well, I had an investment there.

The Court: How much?

The Witness: I don't recall just what I invested it was so long ago, I just don't remember.

The Court: Well, was it $50,000?

The Witness: No.

The Court: What?

The Witness: No, nothing like that.

The Court: It wasn't as high as that?

The Witness: No.

The Court: 20,000?

(698) The Witness: We didn't invest very much.

The Court: Well, it depends upon what you mean by "much", some people here thought $10 was a lot, others seemed to throw around a hundred thousand as though it were nothing. What is your idea of much?

The Witness: I don't remember just what the investment was.

The Court: But you know whatever you invested it amounted to 4% of the total investment?

The Witness: That's true.

The Court: And you don't know what anybody else invested?

The Witness: I don't, no.

The Court: And you don't know what their percentage was?

The Witness: No.

The Court: And you don't know when they joined?

The Witness: No.

The Court: Don't you know when Stacher joined?

The Witness: I don't know in what year it was.

* * *

The Court: Do you remember the year you joined?

The Witness: Yes.

(699) The Court: What year was that?

The Witness: I say I don't remember what year it was when I joined, it might have been '28 or '29.

The Court: But whatever year it was, it was the same year that Zwillman and Stacher and your brother joined, is that right?

The Witness: That's right.

The Court: Now, was Rutkin in the combine before that or subsequent to that?

The Witness: He was already in.

The Court: He was already in.

The Witness: That's right.

The Court: Was—what is this man?

Mr. Tyne: Who, Stacher?

Mr. Van Riper: Kanengiser?

Mr. Tyne: Hendler?

The Court: Was Hendler in it then?

The Witness: No.

The Court: He was out?

The Witness: That's right.

The Court: All right.

By Mr. Tyne:

Q. Was Rutkin in it at that time? A. He was.

Q. Do you know what percentage he had? (700) A. No, I don't.

Q. Do you know how many times you received a cut of the melon, so to speak, financial melon during the period

of time you were in there? Do you know how much money you realized each year from this combine? A. No, sir.

(701) Q. Well, can you tell us within, say, $10,000? A. I don't know.

Q. You have no idea at all? A. (Witness shook his head.)

Q. Have you tried to exhaust your recollection on this? A. No, I never tried.

Q. You never tried.

The Court: Well, try it now. We are asking you questions and we want answers.

The Witness: Well, I can't—

The Court: And you are under oath to give the answers.

The Witness: I would be glad to give it to you, your Honor, but I don't remember.

The Court: Well, just try it.

The Witness: I received money so many different times and I don't remember what money I received.

The Court: You don't remember what is amounted to in any one year?

The Witness: No.

The Court: Approximately, even?

The Witness: I couldn't tell you.

The Court: And you don't know what you got out of it all together?

The Witness: No, sir.

(702)

Q. And you have had plenty of time to think about this, haven't you, Mr. Davis? A. (No answer.)

Q. What? A. I guess so.

The Court: Well, he doesn't recall.

Q. And yet you can specifically relate what you say took place in this apartment in the Park Central Hotel in New York, is that right? A. That's right.

Q. Rutkin wasn't at that meeting, was he? A. He was there.

Q. He was there? A. That's right.

Q. Do you remember when you were in my office? I asked you to come in and see me with your lawyer. A. That's right.

Q. And I asked you to tell me what you knew about this? A. That's right.

Q. I was interested in getting as much information as I could. A. That's right.

Q. And I asked you specific questions? A. That's right.

(703) Q. I asked you generally about Rutkin's activities? A. That's right.

Q. You didn't tell me that he was at this meeting, did you? A. You didn't ask me about it.

Q. Well, I asked you to tell me what you knew about Rutkin's activities. A. I didn't tell you about that.

The Court: Well, that's a rather general request.

Q. I did refer to several meetings, did I not? And I am pretty sure I referred to a New York meeting. A. I believe I—

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Q. I did ask you to tell me what you knew about Rutkin's activities in connection with Browne Vintners, didn't I? A. I believe I told you about the Park Central.

Q. Yes; but at that time you didn't tell me that Rutkin was at that meeting. A. Yes, I did.

The Court: You did?

(704) Q. You did? A. I beg to differ with you, sir.

The Court: When was that meeting held?

The Witness: Some time in 1940.

The Court: Do you remember that very well?

The Witness: Well, it was a very important meeting.

The Court: Wasn't it pretty important when you were putting dough into a bootlegging operation, too?

The Witness: Yes, but when you put money up in those days, you didn't give it a second thought, your Honor.

The Court: You didn't?

The Witness: No; you just put it up and you felt as if your money was protected and you didn't worry about it.

The Court: Protected by what? The law?

The Witness: No, whoever you gave the money to.

Q. And did you feel your money was protected when it was in Browne Vintners? A. I did.

Q. Was there any coercion or force exercised by anyone over you to sell Browne Vintners for 7½ million dollars plus all liabilities, amounting to approximately 8 million dollars? A. No.

(705)

Q. You knew, Mr. Davis, that negotiations had been carried on for a period of time to sell Browne Vintners to other prospective purchasers, isn't that so? A. Not before that day.

Q. Not before that day? A. That's right.

Q. Well, don't you know that offers were made by the National Distillers? A. Not before that time.

Q. And by Schenley's? A. Not before that day.

Q. Well, was it after that? A. That's right.

Q. Then this meeting must have taken place early in 1940 instead of late in 1940; isn't that so? A. Well, I believe during the summer of 1940.

Q. Yes. Then you say that it was subsequent to that that negotiations were carried on with National Distillers? (706) A. (Witness nodded.)

* * *

Q. Was it following this meeting in the Park Central Hotel that negotiations were carried on looking toward the sale of Browne Vintners to other prospective purchasers? A. I was told so.

Q. By whom? A. Mr. Reinfeld.

Q. Did you have any reason to dispute that? A. No, I had no reason.

Q. Well, you were the secretary of the corporation, weren't you? A. I was.

Q. And as such you carried on secretarial duties, didn't you? A. Not very much.

(707) Q. Well, did you just sit around there and do nothing? A. As far as secretarial work, I did.

Q. You were aware of what was going on in the corporation, weren't you? A. I wouldn't say that.

Q. You wouldn't say that? A. No.

Q. You were there every day? A. That's right.

Q. And you attended the directors' meetings? A. I did.

Q. And the stockholders' meetings? A. I did.

Q. And this very important meeting at the Park Central Hotel? A. That's right.

Q. And you say you don't know what was going on? A. Not everything.

The Court: Now, what did you know was going on?

The Witness: I only knew the things they wanted me to know.

The Court: Why? Why do you say that?

The Witness: Well—

The Court: Because they were behind your back or—

The Witness: Well, your Honor, it was a company, it was a one man company. They had an accountant there (708) and they had an attorney and between the three, they run the whole show.

The Court: Well, you were there, weren't you?

The Witness: That's right. I was at the sale—

The Court: You were asked if you were willing to sell, weren't you?

The Witness: That's right.

The Court: And you said yes.

The Witness: That's right.

The Court: What was it you didn't know?

The Witness: I wouldn't know some of the things. The gentleman asked me whether I knew everything that was going on in the company and I tell you I don't.

Q. Well, everything—I don't mean every detail, but you knew the major things that were going on in the company, didn't you? A. The only time I knew that there was negotiations that was going on was with the National Distillers and Schenley's. Right as we were waiting for a call to find out if the company was going to be sold to Seagrams—that's how close it was.

Q. Now, prior to this meeting in the Park Central, you had another meeting, did you not, a board of director's meeting, looking toward the sale? A. After.

Q. After that? A. That's right.

(709) Q. And didn't Mr. Reinfeld leave it up to you and the rest of the directors to make a decision as to whether or not it should be sold? A. Well, when Mr. Reinfeld says

he wants the company sold to a certain company, everybody agrees.

Q. You didn't have to agree, did you? A. I didn't have to.

Q. No. And you didn't protest? A. I did not.

Q. You made no objection whatever? A. No.

Q. And you knew as a stockholder and secretary of the corporation that you had a right to? A. That's right.

Q. And you weren't operating in the bootlegging days? A. It wouldn't do me any good.

Q. Well, now, whether it would do you any good or not, Mr. Davis, you didn't make any objection or protest of any kind? A. No, I did not.

Q. How many times would you say you saw Rutkin at the Browne Vintners plant? A. At the plant?

Q. Yes; the office, rather. A. At the office, quite often.

(710) Q. What do you mean by quite often? A. Well, he was there very often.

Q. What do you mean by very often? A. Well, there was times he would be around everyday and other times we wouldn't see him for a while.

* * *

The Court: What did he do when he was there?

The Witness: Well, when he was there he would be in with Mr. Reinfeld or sit in front of his office or walk around and talk to different men around the office or see people around the office.

Q. That's all he did? A. That's all he did around there.

Q. Did you have anything to do with writing the checks for the company? A. Not—I signed them once in a while.

Q. Did you ever sign any checks for Rutkin as payee? A. Not that I remember.

Q. Not that you remember. Have you exhausted your recollection on that? (711) A. No.

* * *

Q. Well, will you try and determine whether or not you at any time wrote any check to Rutkin as the payee? A. I never did.

Q. You never did? A. No.

Q. There were plenty of men who came into the Browne Vintners office and went into the office and walked around and went to the bar, isn't that so? A. That's right.

Q. Yes. And that is what Rutkin was doing, wasn't it? A. He was in the bar, too.

Q. Yes. Just like dozens of other men who would come in who had no direct connection with the corporation except perhaps as a customer or a friend, isn't that right? A. That's right.

(712) Q. I believe you testified that Rutkin was employed by the company in Chicago; is that right? A. That's right.

Q. How long did that last? A. Oh, about, I don't know; six months, I guess.

Q. Six months. And that's the only employment that you know of? A. That's right.

Q. And you were secretary of the corporation from 1936 till 1940, is that so? A. 1937.

Q. 1937 to 1940 when the corporation was sold? A. That's right.

* * * *

Redirect examination by Mr. Van Riper:

Q. Mr. Davis, do you know anyone else, a friend of the company or customers that had the use of the offices like Rutkin did? A. No, I don't.

Q. Do you recall doing some business with the Hotel Astor about the sale of liquor by Browne Vintners? A. Yes, sir.

Q. White Horse scotch particularly? A. Yes.

(713) Q. With whom did you do business at the Hotel Astor?

* * *

A. Mr. Vanderbeck and Mr. Christenberry.

Q. What was he, the president or the manager? A. He was the manager.

Q. Who made the contract for you with Christenberry of the Hotel Astor? A. I don't know who made the contract, only I saw Mr. Christenberry. He told me Mr.—

* * *

(714) Q. Now, Mr. Davis, you have been asked by the District Attorney as to what conversation you had with him, with Mr. Tyne here, some few weeks ago, I take it? A. Yes.

Q. Was that conversation or meeting attended by a stenographer? A. It was.

Q. Taking down your conversation? A. That's right.

Mr. Van Riper: I ask the District Attorney to produce the minutes of the meeting.

Mr. Tyne: I don't have the minutes. My secretary was just taking down notes. I have to represent to Court and Counsel that I don't have any statement of record of that conversation.

* * *

Marvin Laski, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Your full name, sir? A. Marvin Laski.

Q. Mr. Laski, where do you live? (715) A. Indianapolis, Indiana.

* * *

Q. You are here under subpoena? A. Right.

Q. What is your business now? A. Liquor business, wholesale liquor.

Q. In Indianapolis? A. Yes, sir.

Q. Were you at one time connected with Browne Vintners? A. I was.

Q. In what capacity? A. I was central division manager at Chicago.

Q. Centralization manager? A. Central division manager.

Q. Oh. Central Division. In other words, with headquarters in Chicago? A. Right.

Q. During what years were you employed there? A. 1935 to '40.

Q. Now, you knew Mr. Reinfeld, of course? A. Yes, sir.

Q. You knew him because of his association with the company that you were employed by? A. Yes.

Q. When did you first meet Mr. Rutkin? A. In '38.

(716) Q. And where did you meet him? A. Chicago.

Q. Whereabouts in Chicago? A. At the Congress Hotel.

Q. And who introduced you to him? A. Mr. Reinfeld.

Q. And what did Mr. Reinfeld tell you at the time? A. He told me at the time that Mr. Rutkin would help me promote Wilson whiskey in Chicago.

Q. He told you he would do that; did he ask you to give Rutkin a job? A. No.

Q. And did he tell you how Rutkin was going to promote Wilson whiskey? A. No, he just said that he did know a lot of people in Chicago that I didn't know and probably could help me a great deal.

Q. Did he tell you anything about what you were to do with reference to Rutkin's activities out there? A. No.

Q. Did you have anything to do with Rutkin's activities there? A. None whatsoever.

Q. Rutkin did not work under you then? A. Not with me.

(717) Q. Do you know what salary Rutkin got while he was there? A. No, I don't.

Q. What salary? A. No, I don't.

Q. What salary were you getting at that time? A. $150 a week.

Q. And you were in charge of that Chicago district. What territory did it cover? A. It covered north and south Dakota, Minnesota, Wisconsin, Illinois, Nebraska, Missouri.

• • •

(718) Newark, New Jersey.
Tuesday, October 17, 1950.

(Trial resumed pursuant to adjournment.)

• • •

SAMUEL I. KESSLER, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Kessler, you are a member of the Bar of this State? A. I am.

Q. And have been for how many years? A. 40 years.

• • •

Q. During all of that time you have been practicing law in the City of Newark, have you not? A. I have.

Q. And at one time you were an Assistant United States
(719) District Attorney for the District of New Jersey? A. I was.

Q. And at one time an Assistant Prosecutor of Essex County? A. I was that.

Q. And also at one time a United States Commissioner, is that correct? A. I was.

Q. Now, Mr. Kessler, you know Mr. Rutkin, do you not? A. Oh, yes.

Q. And you know Mr. Reinfeld, Joseph H. Reinfeld? A. Yes, I know Mr. Reinfeld very well.

Q. And you know Mr. Zwillman. A. Yes.

Q. And Mr. Stacher? A. I do.

Q. Now, some time in December of 1942, Mr. Kessler, did you attend a conference held in Lou Holtz' house? A. I did.

Q. Incidentally, I suppose you also knew Mr. Holtz prior to that time? A. I'm not sure. I probably did because I know a lot of people. I'm not very sure about that but I think I did. I would say yes to that.

(720) Q. Now, Mr. Kessler, how many conferences did you attend at Holtz' house? A. Only one.

Q. And do you know on what day it was that you attended, what day of the week? A. It was on a Sunday, just before Christmas or in that season, of '42.

Q. And how did you get to Holtz' house that day, do you recall? A. I received a telephone call and as a result of that telephone call a Mr. Stacher came up to call for me in a car and in the car was a man by the name of Goldstein, and I got into the car and was taken to Mr. Holtz' house.

Q. And I take it then that you and Stacher and Goldstein arrived at Holtz' house at the same time. A. We did.

Q. Now, when you got there whom did you find there? A. There were a lot of people there. There was Mr. Reinfeld of course, Mr. Rutkin was there, Mr. Sam Cohen, Mr.—what's the name of the attorney?

Q. Mr. Popik? A. Mr. David Popik; Mr. Holtz was there, and I believe two or three of Mr. Reinfeld's brothers.

Q. Do you recall whether or not Sam Lentz was there? A. I don't remember but there were a number of people there.

(721) Q. I don't recall whether you said Mr.— A. I know Mr. Lentz didn't participate—if Mr. Lentz was there, he didn't participate in any of the conversation, to my recollection. As I picture the group there I don't remember seeing Lentz there but he might certainly have been there; but if he was there he didn't participate in any of the conversations that took, I think, about three hours, that I was there.

Q. Now then—well, I don't know whether you said that Zwillman was there or not. A. Oh yes, Zwillman and Stacher were there.

Q. Now, in what capacity? A. Stacher came with me.

Q. Stacher came with you? A. And Zwillman was there.

Q. And Zwillman was there when you got there. A. That's right.

Q. In what capacity did you go there, Mr. Kessler? A. I knew nothing about this situation until Mr. Stacher came to my house and told me that he wanted me to come to a conference with Mr. Reinfeld—they had some controversy with relation to the Browne Vintners; and when I got in the car he gave me some short statement. It only took me, I think, maybe five, not over ten minutes between my house and Holtz' house. I live at one end of the City of Newark (722) and he lives at the other end; I live in the Forest Hill Section and his house was in the Weequahic section; I don't remember the name of the street—somewheres in the Weequahic section.

(723) Q. So that you went there, did you, then, representing Facher and Zwillman? A. It wasn't very clear at that time.

Q. I see. A. I was told about this conference and I was asked to come into the conference. When I got there, I declared myself, where I stood.

The Court: What do you mean, you declared yourself, where you stood?

The Witness: Well, I have to go into the conversation, what happened when I got there. When I got there, Mr. Reinfeld asked me to be arbitrator in the controversy; I said I would not be an arbitrator, that if I was going to stay here, I would be representing Zwillman and Stacher. That is what I mean by declaring myself.

Q. Now, incidentally, Mr. Kessler, had you appeared as attorney for Zwillman and Stacher prior to that time? A. I had not.

Q. Had you ever appeared as the attorney for Joseph Reinfeld prior to that time? A. Yes, I represented Joseph Reinfeld, but indirectly; Mr. David Popik was his attorney and every time David Popik had some matter—or he turned over some matters to me that I handled, it was for Reinfeld, but it was always (724) through David Popik.

The Court: Then Reinfeld was your client?

The Witness: Yes, he was my client but I was counsel rather than attorney for Reinfeld.

The Court: You took care of the business, didn't you?

The Witness: I certainly did, I hope.

Q. Had you appeared for Reinfeld both privately, by that I mean in office matters, and publicly as well? A. Oh, yes.

Q. Now then— A. (Continuing) Well, I only appeared, I think, once in a private matter and the other time was in a public matter.

Q. Now, you say that you told Reinfeld that you would not act as arbitrator? A. Yes, sir.

Q. Did you inquire as to what Rutkin was doing at that meeting?

A. Oh, yes, I did.

Q. I will withdraw the question. Will you tell us, please, Mr. Kessler, what was said when you got to the meeting, what (725) you said?

A. When I got there, Mr. Reinfeld spoke up and told me that there was a controversy with relation to certain monies to be paid off in the liquidation of Browne Vintners and that Mr. Stacher and Mr. Zwillman were dissatisfied with the amount of money they had received and asked me if I would arbitrate the matter, they both had confidence in me and if I would arbitrate the matter, and I told them I would not arbitrate, I had found by experience it wasn't a desirable thing for me to do, but since Mr. Stacher spoke to me about it I would represent Stacher and Zwillman and he would undoubtedly have Mr. Popik, who was there, represent him, and if they wanted to discuss the matter I would be very glad to sit down and discuss it with him. He said, "All right, under those circumstances he would be glad to talk the matter over and mention the items in controversy.

And then I asked him to identify who all these (726) people were and he mentioned his brother who was there present with him and Holtz,—he said, "You know Holtz." I said I did. Then when he came to Rutkin, he said, "Rutkin is here. He has the same claim as the claims that Stacher and Zwillman have and he says he didn't get all his money" and from then on we ran into discussion of the items Zwillman, Stacher, Rutkin and Reinfeld spoke of and if you ask me the question, I will be glad to tell you what happened.

Q. Did you say anything then as to what claims should be taken up first? A. When Mr. Reinfeld identified Rutkin as to what he was there for, I said, "Well, let us discuss one claim at a time and when we are through with that, we can take up Rutkin's situation."

Q. And then you proceeded to discuss the Zwillman and Stacher claims? A. That's right.

The Court: Well, why were you to discuss the Rutkin claim? You were not Rutkin's attorney.

The Witness: No, sir, I was not in this matter. I was Rutkin's attorney prior in other matters.

The Court: But not this one.

The Witness: No.

Q. Now, Mr. Kessler, will you be good enough to tell us what the items were that you discussed with Reinfeld, you (727) acting on behalf of Zwillman and Stacher. A. Mr. Zwillman then took over the conversation and he pointed out a number of items in a statement that he wasn't satisfied with, and the first item that was under discussion was a deduction by Reinfeld of Zwillman's interest in the Browne Vintners Company of $245,000, and that was marked taxes, and we got into that discussion and asked Reinfeld to explain that item to me. Mr. Popik and Mr. Cohen interchanged conversation, explained what that item was and why that deduction was made. The explanation was that by reason of some investigation of Mr. Zwillman by the Internal Revenue Department, the investigation led to Mr. Reinfeld and as a result of an investigation of his income on his personal property, his personal income, he was charged with an item of around $400,000 for taxes and he had expenses in the handling of that item of about $80,000, and therefore he felt justified because the investigation led to him through Zwillman that Zwillman should

pay half of the cost of the monies that he paid to the Government and expenses that he incurred. I immediately pointed out to him that on the basis of that, regardless as to why he was being investigated, the income that he was compelled to pay taxes on was his personal income, and I don't see by any stretch of the imagination legally, morally or otherwise, he could call upon Zwillman and Stacher to bear half of the burden (728) and I don't suppose we spent more than half an hour on that question when he said, "All right, if that's the way you feel about it I will concede the item."

The next item which was taken up took only a few minutes. It appeared that Mr. Reinfeld—when I say Mr. Reinfeld, I am speaking of his group, whether he personally did it or Cohen did it or his attorney did it, Dave Popik, or whoever handled his affairs, so when I mentioned Reinfeld I don't mean it was his personal conversation on that point.

Mr. Tyne: Then I object to it, your Honor; I think the speaker ought to be identified.

The Court: I think that probably Mr. Kessler, if his recollection was clear, might identify who said it, but under the circumstances he has said that Popik was the attorney for Reinfeld and certainly he would be entitled to speak for him—who was the other one?

The Witness: Sam Cohen, the accountant. Mr. Reinfeld's accountant.

The Court: Mr. Reinfeld's accountant.

The Witness: He was identified as that at the meeting.

The Court: Well, if you can, identify the persons who said the various things—your best recollection, of course.

(729) A. (Continuing) When this question of withholding funds came up, I have no definite recollection of the exact amount but it was either one of two items; it was either $75,000 or $100,000. I think Mr. Cohen explained that, that that was an agreement between the partners in the business; that that money was to be withheld and it was for a contingency fund for any possible expenses that might occur. Mr. Reinfeld spoke up and says, "Yes, they are entitled to that money because up to the present time I haven't been called upon to pay anything out of that fund, but the agreement was to hold it for some time, but if Stacher and Zwillman want that money now, they can have it," and if they do have any expenses in the near future, he knows that Stacher and Zwillman will reimburse him for it, so that item was settled.

Then there came the item of the New York State tax statement. The size of these monies didn't seem to be much to these people, but I think the item was 25,000 or 30,000 a charge against Zwillman and Stacher for New York State taxes. We went into discussion of what that was for and why it was a proper charge to Stacher and Zwillman and after it was explained by one of the three gentlemen—because they all spoke at different times in relation to these items—I cannot identify what each one said about the particular item, but each one made some explanation—(730) it was pointed out that they had to pay a New York State tax, Mr. Reinfeld and his New York group, and he should pay part of it. I pointed out to him that under the New York law, as I understood it, State taxes were only to be paid by New York residents and since Stacher and Zwillman were New Jersey residents, they should not be called upon to pay the tax. I do not now remember although I searched my recollection, whether that item was allowed or not, but I know it was under discussion.

And then there was one other group of items that were small in size of certain expenses charged against Stacher and Zwillman by the Reinfeld group of the combination and we went into a discussion of those items and it was then agreed upon—it was getting on to 1 o'clock. This happened in the morning—I don't know whether you identified the time or not—it was getting on to 1 o'clock when I said to him I had a dinner appointment on Sunday at 1 o'clock, I couldn't stay there after 1 o'clock. This was getting on to 1 o'clock when I said to them, "Well, as to those items, we ought to have some verification of these expenses." Mr. Cohen spoke and said, "I have all the records in my office. I will be glad to bring them over to your office and you can check them out," and we agreed to do that.

The Court: Cohen's office was in Newark at that time?

(731)

The Witness: Cohen's office is right opposite my office; he is at 744 Broad; I am across the street in Clinton Street.

(732) A. (Continuing.) And we had made an arrangement at that time that we should come to my office. Goldstein was then the accountant. He was identified as the accountant for Stacher and Zwillman; and Goldstein would be there and we would go over the items and if he could prove to us that these expenses were properly made, they would be allowed or disallowed as the situation would develop. And then we spent the rest of the time in a discussion which we considered the most important item of all, which was that Stacher and Zwillman claimed that they had a more substantial interest in the company than appears on the statement. I think the statement showed that they had a 16% interest, and they were paid out on

the basis of 16% interest. They claimed they had a more substantial interest. Then we got into the discussion as to why his percentage interest had been diluted, and it was pointed out by Mr. Reinfeld—

Mr. Tyne: Just a minute. I object to that, diluted.

The Court: Well, I mean the term—

Mr. Tyne: All right.

The Court: —means weakened. I don't see why you object to it. Go ahead.

A. (Continuing.) Then it was explained by Cohen and Reinfeld, or either one of them, that the company needed (733) money and it required more capital; and Mr. Reinfeld said that he had put in at one time $500,000 and at another time had put in an additional $200,000 as a capital fund. And they raised the question why was it necessary to have a capital fund, why couldn't they borrow the money. In any event, the time had gotten late and we agreed that Mr. Cohen would demonstrate that to Mr. Goldstein and myself at this conference arranged for the following week.

That was substantially, as I recollect it, the sum total of all of the conversations that were had down in the recreation room of Mr. Holtz' house.

Q. Thank you very much. Now, Mr. Kessler, do I understand, talking about this statement of Reinfeld that he said he had put in at one time $500,000 and at another time $200,000, that he had put that in without the knowledge of Zwillman and Stacher? A. I don't remember that, at that time, but it developed later on in the course of the conversation. That was a controversial question.

Q. I see. A. I think Stacher and Zwillman contended that they did not know that he had put it in as capital funds, or that he had even loaned it to the company. Mr.

Reinfeld said that he had given them the opportunity to make additional capital funds, they didn't want to do it so he did it himself; (734) but that did not develop in this morning's conversation—that developed later on in the other conferences that were had at my office.

Q. Now, was there any conversation that morning in Holtz' house about Reinfeld having made a profit on bulk whiskey sales? A. No, sir.

Q. That didn't come up? A. That developed later.

Q. All right. A. At least, I don't remember it. If somebody said it, it may have, but if it was, it was just a passing statement.

Q. Now, then, you spoke, Mr. Kessler, about the New York State Tax, and I gather from what you said that that was a New York State Income Tax? A. Yes, sir.

Q. Now, with reference to the $245,000 tax item which you say was Mr. Reinfeld's personal tax and which he charged against Zwillman, did Reinfeld ever say there, at that conference, that Zwillman had agreed to pay half of that tax? A. I never heard of it until this trial started.

Q. All right. Now, then, when you left, Mr. Kessler, how much, about, in dollars, had Reinfeld conceded was due to Zwillman and Stacher? (735) A. Well, there was the 245, there was the item of the contingency fund, which I don't remember, was either 75 or an even hundred; my impression is that it was an even hundred, but I am not sure about it, it may well have been 75 if somebody said so.

The Court: I wish you would say a hundred thousand dollars because we have been accustomed to dealing with those figures and not 75.

A. (Continuing.) So it was in that figure, and I think that was substantially all excepting that some of the expenses that were explained, Reinfeld made some statement at that time, "Well, if you don't want to pay for those ex-

penses I will bear them myself". I don't remember what the amount was, but I think it was substantially $350,000 at that time.

Q. In other words, they had conceded either 325 or $345,000 at that time? A. Yes, sir.

Q. Now, just before we leave there let me clear this up. You told us, of course, that you were representing Zwillman and Stacher. Did you ever at any time, Mr. Kessler, in this controversy represent Zwillman and Reinfeld at the same time? A. Oh, absolutely not; that is one reason I made it very clear and specific, I would not represent both sides. (736) It never works out.

Q. And did you ever represent Reinfeld at all in this controversy A. Certainly not.

Q. Now, then, after you left there on Sunday was there a further conference in connection with this matter? A. Yes; the next conference was had in the following week between Mr. Cohen, Goldstein and myself, which is the conference I pointed out to you was arranged for on a Sunday morning. At that time Mr. Cohen brought over some records, sheets of paper, and we made notations of them. I think he left some on a temporary basis, and I think he may have gotten them back, I don't remember that. And from that conference we concluded, and it was the subject of a later conference with Reinfeld. We investigated these $500,000 investments which Reinfeld contended as well as this $200,000 investment and also come of these items of disbursement. After that conference, I arranged for a conference at my office very shortly after that. These conferences are matters of days, not over a week between conferences in the early part. I arranged for a conference through Popik for his side and I arranged with Zwillman and Stacher for our side, to meet, and we met in the following week, I believe. At that conference there was present Mr. Zwillman, Mr. Stacher, Mr. Gold-

stein and myself, (737) of course, Mr. Rutkin, Mr. Dave Popik, Mr. Cohen and Mr. Reinfeld and—I opened the conference by stating to Mr. Reinfeld that we had some very serious contentions which were not fully discussed at the recreation room of Mr. Holtz' house, and I made the contention, on behalf of Mr. Zwillman and Mr. Stacher, that this $500,000 was money that had been made—

The Court: I don't think I care to enter into the involuted and convoluted activities of Zwillman and Reinfeld and how that 500,000 was arrived at. What we are concerned about is Rutkin.

Mr. Van Riper: Yes, if your Honor please, but this also—

The Court: There was no discussion heretofore about this capital investment of $700,000, and I don't think it is material at this time.

Mr. Van Riper: But, your Honor please, in the first place Rutkin was present at this conference that the witness is about to testify to.

The Court: I don't care if he was present or not, there was something said about Rutkin.

Mr. Van Riper: And the testimony now is, from this witness, that Reinfeld said that Rutkin claims he did not get all of his money and that this witness said, "Let's take up one claim at a time".

The Court: All right. I am not concerned with (738) Zwillman's claim, Zwillman is not in this except in so far as there may be something to contradict what Reinfeld has testified here.

Mr. Van Riper: But, if your Honor please, we will be able to show you by further testimony some relationship between our claim and the Zwillman claim.

The Court: Brought out at this meeting?

Mr. Van Riper: We will be able to show that the testimony which the witness is now about to give has something to do with Rutkin's disposition of his claim in the same regard at the time.

The Court: Was there a discussion of Rutkin's claim at this second meeting?

The Witness: No, sir, but it followed through in the following claims because this question was continued on to two or three meetings.

The Court: Did you represent Rutkin at any time?

The Witness: No, sir, but it did develop at a subsequent meeting as to Rutkin's receiving $250,000.

The Court: All right, proceed, and if it isn't material I will strike it from the record.

(739)

The Court: All right, you were talking about the 500,000 and the 200,000 capital investment allegedly made by Reinfeld.

A. In the course of our checking Mr. Cohen's papers, and as a result of what we gathered from those papers, I said to Mr. Reinfeld that we have some very serious contentions, that the $500,000 that he claimed to have invested, and which actually was put in, we verified that, came out of the pockets that he had made through one of his other companies in the sale of liquor and alcohol to the Browne Vintners Company.

We took the position that he had no right to make the profit through his other companies and then invest it in Browne Vintners, that the Browne Vintners Company was sufficiently financially sound to have been able to buy its own liquor directly so that there wouldn't have to be a mean profit.

Mr. Tyne: May I have the time fixed on that?

The Court: Yes. It was within a week of the—

The Witness: This happened within the first two weeks of January of '43.

Mr. Tyne: I mean when the sale or purchase of (740) whiskey took place.

The Witness: Oh, some time prior to the liquidation of the Browne Vintners Company.

Mr. Tyne: When, when?

The Court: Was there any mention made about when it was?

The Witness: We did know; I don't remember it now.

The Court: You don't recall?

The Witness: Cohen's record shows.

The Court: But you don't remember now?

The Witness: Oh, no, I don't remember now.

The Court: All right.

The Witness: But some time in the course of the operation of Browne Vintners.

The Court: All right.

The Witness: And prior, of course, to the investment of the $500,000. We contended that that money, the profit on that liquor, which was $500,000, really belonged to the Browne Vintners Company because he had no right as the manager of Browne Vintners —this was our argument to Mr. Reinfeld. And then we also talked about the question of the $200,000. There was a straight investment but we took the position in behalf of Zwillman and Stacher that he had no right to make a capital investment, that the company was financially strong enough to go out (741) and borrow the money and, therefore, didn't require a capital investment. And I said to Mr. Reinfeld at this time, and Mr. Popik was there, I

said, "Mr. Reinfeld—" I called him Joe—I said, "Joe, if we are going into this very serious controversy, which amounts to maybe a million dollars, I don't know whether you want to keep on being represented by Popik or not, or whether you want to get other counsel because this looks like we are going to have a very serious controversy; we are going to insist", and I pointed out that we were going to insist that this profit did not belong to Reinfeld but it belonged to the Browne Vintners Company.

So he said, "Well, if that's the way this conference is going to go I want to get other counsel". I said, "Fine, let's adjourn until such time as you have an opportunity to get other counsel". And on that tone we did adjourn, we went into no discussion, the only statement that was made was by myself along the lines I have indicated and Mr. Reinfeld's reply then he wants other counsel. And that was at my suggestion, if he didn't want to rely upon Mr. Popik, because I knew the relationship between Mr. Popik and Mr. Reinfeld because I had represented Mr. Reinfeld through Mr. Popik. So we adjourned at that point and very shortly thereafter, I would say maybe within a week or two, I was advised in some manner, either (742) by Popik or Mehler or Mr. Pearse called me up and said they are now representing Mr. Reinfeld and they are ready to have a conference.

Q. Now, will you let me interrupt, please, Mr. Kessler, for a minute. Was there a meeting in your office with Mr. Reinfeld present, without Mr. Popik, on the Monday after the Sunday when you were at Holtz' house? A. I never met Mr. Reinfeld after I met him on Sunday excepting

in the conferences when the group was there, and Mr. Rutkin was always there, at all conferences Mr. Rutkin was there.

The Court: I think the question was whether there was a meeting at your office. Whether you were present or not.

The Witness: No, sir, not that I know of, never heard of it.

Q. What about Reinfeld being there without Popik? A. When I was there?

Q. Yes. A. No, sir.

Q. Was Reinfeld ever at your office in connection with this matter without Popik being with him? A. Never.

Q. All right. He was always there with Popik; when he came there on other matters Popik was always with him.

(743) Q. Now, then, I interrupted you just as you were saying, "I heard from Mr. Pearse and Mr. Mehler they were ready to confer". (744) A. And some time thereafter a conference was arranged and Mr. Mehler came over, Mr. Pearse, Mr. Reinfeld, Mr. Popik, Mr. Cohen, Mr. Rutkin, Zwillman and Stacher were there, Goldstein was there, and myself. And there we began the discussion of our first contention. We took a double position in that matter. We took the first position in behalf of Stacher and Zwillman that this profit belonged to Browne Vintners Company, of the 500,000. When we exhausted that argument and no concession was made on that, we then took the position that it should be a loan instead of a capital investment, because the company was financially strong enough to have stood, had the ability to make such a loan or borrow that much money. And Mr. Reinfeld would not concede, nor would the attorneys in his behalf concede, along those lines. Then we argued considerable—we had two or three meetings after that along exactly the same lines,

where we contended that the $200,000 could not be considered as capital inyestment because that took away the profits from not only Stacher and Zwillman but took away the profits from every other partner who was involved. But I wasn't interested in every other partner; I was interested in Stacher and Zwillman; and it took their profits away. In other words, their stock would have been worth that much more if there was a less capital investment and loans on regular loan basis. And Mr. Reinfeld at no (745) time conceded, he denied that he had a right to make—that he didn't have the right to make a profit. He said that—at that time, he said that when he made these capital investments, he gave every partner the same opportunity to make capital investments, they didn't see fit to make it so he made it himself. That was his firm contention. And we ended on that and we couldn't get anywheres else until we had this last meeting, what I call the last conference meeting as distinguished from the payment of the money meeting. Finally we got nowheres and Mr. Reinfeld took the position, "I will not pay any more than I agreed to pay at Mr. Holtz' house." And we got no further with it than that. And then it was agreed that—

Q. Excuse me a minute. Did you know what he had agreed to—

The Court: Just a minute. Let him finish.

* * *

A. (Continuing) It was then agreed by Reinfeld that he would pay $358,000 and no more.

The Court: All right.

A. (Continuing) And Mr. Stacher and Zwillman said, "Well, if that's all we can get out of it, we will close it; we won't pursue this," because we had had two or three conferences and got nowhere in those two or three conferences.

(746) Q. He agreed he was paid $358,000; that was to Stacher and Zwillman? A. That's right.

Q. And by that time had you been apprised as to what he had agreed to pay over at the house? A. Well, in the course of the conversation Mr. Reinfeld had said or Mr. Popik or Mr. Cohen had said, "He agreed to pay $358,000. That's all he is going to pay. We are wasting time in having these discussions about the 500,000 and about the 200,000. He will not make any concession on that."

Q. So in the final analysis he agreed to pay that which he had already agreed to pay at the house? A. Well, that's a conclusion. I can only tell you what he said.

Q. Now, then, was there anything said after the settlement—that is, after the agreement to pay Zwillman and Stacher 358,000 and their willingness to accept, was there anything said by Rutkin about his claim? A. Yes, at that time Mr. Rutkin said "Now, what about my claim?" and I said, before anybody else had a chance to say anything else, I said, "Joe, you have been friendly with this man for so many years, you have heard all of this discussion of these claims that were made on behalf of Stacher and Zwillman; you know the concessions you made (747) in my office; I said, "Go into my library with Rutkin. You probably can settle this, without the help of us lawyers or anybody else." And they went into my library. My private office is an office on one side and right next to it with a connecting door is my library; and they went into the library and they were in their for ten or fifteen minutes.

Q. Then did they come out? A. Then they came out.

Q. And when they came out, what did they say? A. They came out and Mr. Reinfeld said; and Mr. Rutkin confirmed it, that "We have settled our differences for $250,000 and we are shaking hands on it," and they actually went through the performance of shaking hands.

Q. They shook hands right there? A. Yes, sir.

Q. All right. Now, then, at that time was anything said about taxes on this money? A. After that Mr. Zwillman said, "What about these monies? Are they tax free?" Mr. Reinfeld says, "Yes, they are tax free." Mr. Cohen stepped in and says, "Yes, all the taxes have been paid. We always talked about it here. I will show you the sheet," and he pulled out a sheet which indicated, as I read it, that taxes were paid upon all of the capital gains of Browne Vintners Company.

Q. And was that sheet discussed there at that time, with you? (748) A. Oh, yes, it was shown to me, it was put on my desk. We went over it. I think probably I looked at it more than anybody else, and Mr. Goldstein, and we saw the items where it clearly indicated every stockholder of record—it had nothing to do with any other interest—every stockholder of record, so much investment, so many shares he had, so much money was coming to him, so much tax was deducted for capital gains tax to the Government, and the net amount that went to each stockholder of record.

The Court: Well, were Zwillman and Rutkin stockholders of record?

The Witness: No, sir, they were not.

The Court: They were front names on there?

The Witness: So, of course, I understood all along, but they didn't appear as stockholders of record, no, sir.

Q. And was Rutkin present in the room when this discussion went on? A. Oh, yes; he always was present.

Q. And shown the sheet and all that sort of thing and Mr. Kessler, you said at that time that Cohen said, "I'll show you that the taxes have been paid"; that something was said about "We have talked about taxes before." A. Oh, yes; during the course of the conversation we talked about deductions. When we looked at all the deductions

of Mr. Zwillman, we saw there was a cash item for capital (749) gains taxes deducted. Nobody questioned that; because the holder of that stock, whoever he was, had paid the taxes, and a proper deduction was made from Zwillman and Stacher's money.

Q. Then I take it that at these previous discussions that had come out, that the taxes had been paid on the capital gain tax. A. Yes, sir.

Q. Now, Mr. Kessler, you said that Rutkin and Reinfeld went in a room. Did they go into a room together at Holtz' house, on the Sunday on which you were there? A. Nobody left the room, to my recollection, excepting Reinfeld's brothers; they went upstairs and downstairs, and nobody else left the room. Maybe somebody went to the washroom, I don't remember that, we were there for three hours, but nobody left the room. The discussion continued from the time I came in until the time I left. I had no recollection of anybody leaving, whatsoever.

Q. Mr. Kessler, ever at any time, either in Holtz' house or at any of the meetings in your office, did you say to Reinfeld, "What are you going to do with Rutkin" and did Reinfeld say, "What are his claims?" and did you say "Go in a room with him, give him some money and get rid of him"? A. That isn't the way it happened, to my best recollection. It happened as I have expressed it here this morning on the stand.

(750) Q. Now, then, after you had finished with your settlement there and you had gone over the sheet with Cohen to show that the tax had been paid, was anything said about when payment would be made or how? A. We discussed when it would be made and Mr. Reinfeld said "Well, give me a little time to get this money in and I will call you up or the lawyers will call you up and we will make an appointment to pay off."

Q. Was anything said to you how it was going to be paid, whether by check or cash? A. Well, I think that the

way that got about, I said, "When do you expect to send the check" and Mr. Reinfeld said, "I will pay it to you in cash as soon as I can collect the money." I don't think there was any point in that discussion.

Q. A day, then, was not fixed for the payoff? A. It was not.

Q. Now, subsequently a day was fixed for the payoff? A. We got a telephone call a day or two before and they said they would be in and, of course, the date was fixed by the release. I think the release was the 11th or 13th—is the release the 11th?

Q. The 11th. A. The 11th they agreed to come in on that day and did come in.

Q. I show you letter on the letterhead of David Popik (751) addressed to you marked Exhibit D-10 for identification, and ask you if you received that from Mr. Popik? A. I have no specific recollection, but I am quite sure this was in accordance with the tenor of the letter. I have no specific recollection of it.

Mr. Van Riper: I offer the letter in evidence, sir.

* * *

The Clerk: This Exhibit is marked D-10 in evidence.

(Received and marked Exhibit D-10.)

Q. Now, Mr. Kessler, I take it that you recall the day when the payment was made? A. I recall the occasion; the exact date I don't recall—the first part of—

Q. I don't mean the date. Do you recall the occasion and there has been testimony that it was paid in your library and you were in and out at times. Now, do you recall the (752) release being there to be signed? A. Yes, sir.

Q. And had you examined the release before it was signed? A. I am sure I did for I got my clients to sign it.

* * *

Q. Mr. Kessler, I show you Exhibit D-9 for identification, which is a photostatic copy of a paper, and ask you if that is a photostatic copy of the release which was executed there that day? A. I assume it is, because my signature appears on it.

The Court: Have you any recollection about the release, Mr. Kessler?

The Witness: Yes, sir, very definite, but I don't remember the wording of it.

The Court: But you identify that as a photostatic copy of the release?

The Witness: Yes, sir.

The Court: Which was signed that day?

The Witness: Yes, sir.

Q. And the signature as a witness on the second line is (753) your signature, is it? A. Yes, sir.

Q. And the three people whose names are there, Zwillman, Stacher and Rutkin, all signed there? A. Yes, sir.

Q. And there was only one release signed is all? A. That's all I can remember.

Mr. Van Riper: I offer the release, if your Honor please. We will have it marked, if you will, please, when we get the original.

* * *

The Clerk: The exhibit is marked D-8 in evidence.

Mr. Van Riper: I am sorry. The Clerk calls my attention to the fact that in my question to Mr.

Kessler I referred to Exhibit D-9. It should have been D-8.

(Release is marked Exhibit D-8 in evidence.)

Q. After the money was paid, the release was signed. Did that dispose of the matter at that time? A. That's all.

Q. Did you subsequently represent Zwillman and Stacher, Mr. Kessler, in connection with a question as to their not referring to this money, their income tax (754) return? A. I didn't represent Mr. Zwillman; I represented Mr. Stacher.

* * *

By the Court:

Q. Let me ask you, Mr. Kessler, you don't know anything about the organization of the combine originally? A. No—of the Browne Vintners Company?

Q. No, no. I mean in the bootleg days. A. No, I didn't represent anybody at that time.

Q. You knew nothing about how the combine was formed? A. No, sir, I knew nothing about it. The only intimation I have gotten is from the newspapers.

Q. And your association with the case started with the Browne Vintners? A. My association started in 1933 in a casual way. At that time in 1933 I represented Mr. Langfield when he bought out a company known as the Knickerbocker Company or Knickerbocker Wine & Liquor. That was a New York transaction. I went to New York representing Mr. Reinfeld and he bought out the Knickerbocker and that I think was the last I had to do with it. Later on I learned that the (755) Knickerbocker and another company that he had bought out the Brown Drug Company, were all combined into one company known as the Browne Vintners. I had nothing to do with that myself although I had known of it happening.

* * *

Cross examination by Mr. Tyne:

Q. Mr. Kessler, you said in your testimony, the beginning of your testimony, I believe, that when you were called on, you went down to the Holtz house, it was on a Sunday you said? A. Yes, sir.

Q. And who went with you? A. Mr. Stacher came up in his car and Mr. Goldstein. The three of us were in the car when he came to Mr. Holtz' house.

Q. Stacher— A. And Goldstein and myself.

Q. I. George Goldstein? A. That's right.

Q. Certified public accountant of Newark? A. That's right.

* * *

Q. Where did you meet Zwillman? A. He was in Mr. Holtz' house when I got there.

(756) Q. What time did you arrive there? A. I fix the time at about 10:15 because I left my house around 10 o'clock or 10:05, something like that, a few minutes either way.

Q. Had you talked to Zwillman before you arrived there? A. No, sir.

Q. But you did represent Zwillman, didn't you? A. I never represented Zwillman up to that time.

The Court: No, at that particular conference.

The Witness: Yes, sure. Mr. Stacher explained to me what his and Zwillman's interest was in the Browne Vintners situation in the period of time that we came in the car.

Q. Did Stacher say that Zwillman sent him up to get you? A. I don't think he used that expression but I am sure he called for me in behalf of himself and Zwillman.

Q. Well, did he mention Zwillman in this car conversation? A. Oh, undoubtedly.

Q. And it was made clear to you that you were going to represent Zwillman at that meeting? A. Yes, sir.

Q. Being held? A. That's right, sir.

Q. And who arranged to get Goldstein? A. That I wouldn't know. I can assume, but I wouldn't know although I have heard some hearsay about it. I was (757) told how Goldstein came into the picture.

The Court: No, don't—

The Witness: But that's all I know about it.

Q. Then you attended this meeting; a number of persons were there when you arrived there, you say; Zwillman was there and Rutkin? A. Yes.

Q. And a number of other persons, is that right? A. That's right.

Q. It was about 10:30 in the morning? A. I think the time was 10:15, within that time a few minutes.

* * *

Q. I just want to know this, Mr. Kessler: is this Joe Stacher known as Doc Rosen, is that the name? A. I know him as Joseph Stacher. I have heard him referred to as Doc Rosen. I know him as Joseph Stacher.

Q. And you sat down to the conference. Did Mr. Reinfeld say he would like to have you represent him as well? A. No, sir.

Q. Was the word "arbitrate" used? A. Yes, sir.

Q. And after the word "arbitrator"—who used the word arbitrator? A. Mr. Reinfeld said he wanted me to arbitrate the matter.

(758) Q. He was satisfied to have you sit in and make the decision on this? A. Yes, sir.

Q. And when you did make the decision, he accepted it? A. No, sir, I made no decision.

Q. You made no decision? A. No, sir, I made a contention on behalf of Zwillman and Stacher.

Q. You made no decision at all? A. No, sir, I made a contention. I don't want to argue with you on the words but I made no decision because I wasn't sitting as the person to decide. I made the contention that, taking the tax claim as the first instance, that he had no right to charge that against Stacher and Zwillman. That is not a decision unless you want to call it the decision on behalf of my client, but I made no decision on behalf of anybody.

Q. Whether or not you arbitrated, he was willing to accept you and abide by your decision, isn't that so? A. And I said I wouldn't act in that matter.

* * *

Q. During this first conference here with Mr. Reinfeld, did Zwillman tell you that there had been a contest over (759) the taxes due Zwillman? A. No, sir, he didn't tell me that.

Q. You testified that the investigation, Internal Revenue investigation led from Zwillman to Reinfeld. A. No, sir, I didn't testify to that. I said I was told so at the conference; later on I learned it wasn't so but that's what I was told at this first conference.

Q. Mr. Zwillman was there, wasn't he? Did he deny that? A. Yes, sir.

Q. Did Zwillman or Reinfeld tell you that as a result of this tax investigation, Zwillman said "Rather than letting this thing get the publicity, I would rather it was settled." A. No, sir, nothing like that was said.

Q. He would agree to pay $225,000? A. Nothing of the kind was said at that time or any other time.

Q. Was it said that Mr. Reinfeld's lawyer advised him to contest it and it was Zwillman who said, "We ought not to contest it, we ought to pay it." A. There was no such line of conversation at that time.

Q. You did say, Mrs. Kessler, that you told Reinfeld that it was his personal obligation, is that right? A. Yes, sir.

Q. His personal money? A. That's right.

(760) Q. His personal funds? A. Yes, sir.

Q. And that he should pay it? A. It was either he or one of the companies.

Q. No, him you testified, Mr. Kessler. A. Yes, but I don't make any distinction between him and his wholly-owned companies.

The Court: Do you know they were wholly owned?

The Witness: In the conversations along that line he always speaks about there being "my companies."

Q. You testified, did you not, Mr. Kessler, on direct examination that you told Mr. Reinfeld that this was his personal obligation and should be paid out of his personal funds; didn't you so testify? A. I certainly did.

Q. And you said nothing about a wholly-owned corporation? A. I don't know whether the assessment was made up against him or partly against him and against one of his companies when I said to him that it was his obligation.

Q. Now, Mr. Kessler, you took the position in the beginning that this was Joe Reinfeld's personal obligation and that he should pay it? A. That's right; he had no right to charge it against Zwillman and Stacher, which he did.

Q. Well, you insisted on that all along? (761) A. That he had no right to charge it against Zwillman and Stacher, if that's what you mean.

Q. And you never changed that position, did you? A. Oh, no.

Q. And he ultimately did pay this money, did he not? A. To the Government?

Q. No, that Reinfeld ultimately did pay this money, this $358,000, owed to Zwillman and Stacher? A. No, he

said that money was withheld from the funds and it came out of the funds.

The Court: No. Did he ultimately pay the $358,000 owing to Zwillman and Stacher?

The Witness: I don't know who paid it, sir. I know it was paid through Reinfeld. I had no idea where the money came from.

Q. But it was delivered to your office by Mr. Holtz? A. That's right; Mr. Holtz and Mr. Pearse.

Q. Mr. Holtz and Mr. Pearse representing Mr. Reinfeld? A. That's right.

Q. Personally? A. I don't know.

* * *

The Court: Did they represent him impersonally? He represented Reinfeld, didn't he?

(762) The Witness: Yes, but he may represent anybody else—I don't know. I can only tell you what I know.

The Court: But in this instance he was representing Reinfeld and so told you, didn't he?

The Witness: That's right.

The Court: Well, that's all we want.

Q. From the time of this first meeting that you attended in Holtz' house—strike that out.

At this first meeting, Reinfeld told you that he would pay $358,000 and no more, isn't that so? A. No, sir.

Q. When did he first tell you that? A. Some time in one of the conferences at my office.

Q. Well, was that the first time he mentioned a figure that he would pay $358,000? A. What do you mean? The first time, at one of these conferences he finally got around to that's all he would pay and no more.

Samuel I. Kessler—for Defendant—Cross

Q. When the figure was finally arrived at by Reinfeld, it was $358,000? A. These claims were conceded and uncontested.

Q. A part of this claim was made up from the contingency fund? A. Yes.

Q. You said it was seventy-five or a hundred, maybe two (763) hundred thousand? A. No, one hundred.

Q. There was never any question about— A. Mr. Reinfeld never raised any question, the question was the time of payment, that was all.

Q. And from the time he said he would pay $358,000 he never changed that position; isn't that so? A. When he finally agreed upon that figure, he never changed.

Q. And the conferences continued for a period of time? A. We had two or three conferences along those lines, not over three.

Q. Over a period of several months? A. I think so, yes.

Q. And when the conferences finally ended or the decision, the sum that Mr. Reinfeld agreed to pay Zwillman and Rutkin remained $358,000?

The Court: Zwillman and Stacher.

Mr. Tyne: Zwillman and Stacher.

A. That was the only amount he agreed upon and he wouldn't concede the other claims which were made.

Q. Now, you talked about an investment of 500,000 and 200,000 by Mr. Reinfeld. Was that at a time that the corporation's capitalization was increased? A. You mean the Browne Vintners?

Q. Yes. (764) A. I assumed that from the papers.

Q. And at that time don't you know that an offer was made to all of the stockholders? A. I wouldn't have the least idea about that.

Q. And don't you know that they even asked a broker to sell the stock for them? A. Never heard it until you just asked the question.

Q. You never heard it? A. No, sir.

Q. Mr. Kessler, did you make any notes of these conferences that you had? A. Oh, undoubtedly. I haven't any now, but I made them.

Q. Did you make them? A. I am sure I did.

Q. Do you have them? A. There weren't very many to be made because the contentions were very simple; we got it all out of the papers of Mr. Cohen.

Q. Did you make any records? A. I have no recollection of that at the moment.

Q. Well, did you examine any records before you came to Court? A. Oh, yes—before I came to Court?

Q. Yes. A. No, I had nothing to examine.

(765) Q. Nothing to examine? A. No, sir.

Q. You don't have any papers or memoranda at all? A. No, sir.

Q. Did you destroy them? A. I don't think I have any. If there were, they were very insignificant papers that didn't mean anything. I have no recollection of what happened to them now. They may be filed, but I doubt it.

Q. Even though these conferences covered a period of several months and involved the large sums of money, it didn't require any record to be made? A. It didn't require any record to be made; from what I told you I don't think I kept any notes; I may or may not have them.

Q. Did you look for them? A. No, sir.

Q. As far as you know, you don't have today any record of anything that transpired during that period of time? A. I have no information on it now because I didn't look. I don't think I have, to be very truthful about it, but I have no recollection of having any.

Samuel I. Kessler—for Defendant—Cross

Q. Was it told to you during these conferences that up until 1938 the Browne Vintners Company was in bad financial condition? (766) A. I never heard of that.

Q. You never heard of that? A. No, sir.

Q. You know they didn't begin to make money until after '38? A. I don't think I ever looked into the question of whether they made money or not.

Q. You didn't look into that; you didn't think it was necessary in connection with the contention that Mr. Reinfeld had unjustly enriched himself? A. I didn't say it, that's the contention we made.

Q. You didn't prove it, did you? A. We think we did.

Q. You think you did, but you didn't get any more than Mr. Reinfeld said he would agree to pay you, isn't that so? A. Well, of course, that's always the case in a settlement. It is what the man offers and what the other man accepts.

Q. You had all the books and records, they were made available to you? A. They did not; we didn't ask for them; we only looked at the records Mr. Cohen brought over.

Q. You had I. George Goldstein representing you, didn't you? A. Yes.

Q. He made an examination of those records? A. Those records were produced—they were in Browne (767) Vintner records.

Q. Didn't you testify on direct that Mr. Cohen said "if you want to look at the books and records, we will make them available and bring them to your office"? A. I don't remember I said books. He said records and he brought them over.

Q. Why did you employ I. George Goldstein to examine those records instead of a certified public accountant? A. I suppose I employed him to examine these records that Mr. Cohen produced.

(768) Q. Yes. So that you had available to you the services of a certified public accountant and you had available to you the records of Browne Vintners. A. That's right. But we never had any reason to examine into the profit end of the business of Browne Vintners.

Q. So that when the capitalization of Browne Vintners was increased, naturally the holdings of the various stockholders decreased, isn't that right, by percentage? A. That's why I used the word "diluted." That's right, sir.

Q. Yes. And if this stock was offered for sale by anyone and they didn't take advantage of it, that was their hard luck, wasn't it? A. That's a question that I can't answer as a witness. I can tell you whatever opinion I had on that, but that's a business conclusion. If you want my opinion I will be glad to discuss it with you.

* * *

Q. Now, your brother, Nat Kessler, had an interest in Browne Vintners, didn't he? A. He certainly did not.

(769) Q. He did not? A. No, sir; and you know it.

Q. Well, was he fronting for anybody? A. No, sir.

Q. Was he an officer of the company? A. No, sir.

Q. Was he connected with Browne Vintners at all? A. He was what was known as a Public Director for about a year, way back in 1933 or '34.

Q. Public Director? A. Well, you know all about that. You examined me in your office. I told you all about that.

The Court: We don't know about it.

Mr. Tyne: No. I want the Jury to know about it.

The Court: If it is immaterial, counsel will object to it.

The Witness: I see no reason for dragging that in. Counsel knows it. That's the point.

Q. Well now— A. All right, I am sorry.

Samuel I. Kessler—for Defendant—Cross

Q. You are not sitting as judge in this case, Mr. Kessler. A. All right.

Q. Your brother was interested in the company then, wasn't he? A. He was not.

* * *

(770) Q. Was he employed by Browne Vintners? A. He was not.

The Court: Just tell us what he was. He was public relations something or other, was he?

The Witness: No, sir.

The Court: What was he?

The Witness: He was asked to be a director. He never attended a meeting and was there for a year or two. Then they changed—

The Court: And that was his sole connection?

The Witness: That's all.

The Court: All right.

Q. Did he receive any compensation? A. No, sir.

Q. As a director? A. No, sir.

Q. Was your brother ever joined as a defendant with Browne Vintners in a suit by a stockholder or one who was making a claim? A. I never heard of it.

Q. You never heard of it? A. No, sir.

Q. You don't know whether it ever took place? (771) A. I don't believe so. But I never heard of it, so how do I know it took place or not.

Q. Well, do you recall the suit of Edward Seaman versus Browne Vintners and Nat Kessler? A. No, sir.

Q. You never heard of it? A. Never heard of it; at least, to my present recollection I never heard of it.

Q. Now at any time during these conferences did Rutkin ever allege that his claim derived from Browne Vintners? A. Yes, sir. Mr. Reinfeld stated that.

Q. I am talking to you about Rutkin; I am asking you about Rutkin. A. Mr. Reinfeld stated it.

(772) Q. Do you remember this conference we had in my office and I asked this question, Mr. Kessler: "Any time during the conference did Rutkin ever allege that his claim derived from Browne Vintners Company?" and your answer was "No."? A. I never made the statement, Mr. Reinfeld made the statement.

Q. Oh, you are saying that Reinfeld made the statement that— A. I said that in my direct examination, that was one of the first remarks when I asked for the identification of who the people were and why they were there.

Q. When I asked you if Rutkin ever made the claim. A. No, he never made the claim, he never got around to it.

Q. Never made the claim at all. You were saying that Mr. Reinfeld made the claim that he had an interest in Browne Vintners? A. No, Mr. Reinfeld made the statement.

Q. What statement did he make? A. When I asked for the identification of the people at that meeting he said, "Mr. Rutkin makes the same claim," and you will see it in your notes. Mr. Rutkin makes the same claim as Stacher and Zwillman and claims he hasn't got all his money.

(773) Q. Isn't it a fact, Mr. Kessler, that Mr. Rutkin got up and said, "Well, what about me?" A. That was at the last conference.

Q. Yes, "What about me?" A. No, sir, "What about my claim," or, "Now what about my claim?" Words to that effect.

Q. Yes. A. I can't give you the exact words, it is several years ago, but in substance that is exactly what it was.

Q. You said, as I understood your testimony, "All right, you two slept together," and so on, "you have known each other, why don't you go in there and settle it?" A. That's

right, plus you don't need lawyers and accountants and things like that.

Q. You don't need lawyers and accountants? A. That's right.

Q. Now, you had been negotiating with—strike it out.

At no time during all these conferences did Rutkin have a lawyer, is that right? A. That's right.

Q. You didn't know what Rutkin's claim was of your own knowledge, did you? A. I did at the point where Mr. Reinfeld told me.

Q. No, no, of your own knowledge. A. No, of course I had no knowledge.

(774) Q. And you did not know what had transpired between Rutkin and Reinfeld over a period of a month or two? A. Oh, no.

Q. Well, did you? A. I wouldn't know that.

Q. You didn't know that—strike it out. These conferences continued for a period of several months and there were contentions made and counter-contentions made? A. That's right.

Q. And they were finally settled insofar as Zwillman and Stacher were concerned? A. That's right.

Q. Now, even though there were contentions and counter-contentions and negotiations and counter-negotiations, at the final settlement there was not one word said about Rutkin's claim? A. There was no occasion for it.

Q. I am asking you—not whether there was any occasion for it, was there any word said? A. No, there wasn't any because there was no occasion to say it.

Q. Would this refresh your recollection with respect to the suit that I referred to before in which your brother was named a defendant along with Browne Vintners and others, a suit instituted in the Supreme Court of New York, (775) Appellate Division, First Department, Edward Seaman, plaintiff, versus a number of defendants, one of

who was Browne Vintners and Nathaniel Kessler? A. I have no recollection of it.

Q. No recollection at all? A. Absolutely not.

The Court: How did your brother become a director of Browne Vintners?

The Witness: Mr. Reinfeld asked me if I would be a director and I said I would not but I would permit my brother to be a director, and that is all my brother knows about it. My brother is a law partner of mine.

Mr. Van Riper: If the Court please, I have no objection to the question being asked but may I ask the District Attorney if he will read the names of all the defendants in that suit?

Mr. Tyne: Oh, yes; they are very numerous.

The Court: All right.

Mr. Tyne: Very numerous. Do you want them all read?

Mr. Van Riper: I think it is only fair to Mr. Kessler that you read all the names inasmuch as he is not the only one who was a defendant.

Mr. Tyne: Oh, no, no. I don't mean to convey any such inference.

(776) The Court: He didn't say so, either.

Are there any other directors of the company?

Mr. Tyne: Sure.

The Court: Were they all directors of the company?

Mr. Tyne: Directors and stockholders and everything else, I suppose.

Mr. Van Riper: How many?

Mr. Tyne: I would say about 25.

Mr. Van Riper: All right.

The Court: All right.

I think probably we will recess now for five minutes.

(Whereupon a short recess was had.)

By Mr. Tyne:

Q. Mr. Kessler, in the course of your testimony I think you mentioned— A. I'm sorry, I didn't hear you.

Q. I will speak a little louder. You mentioned—during the course of your testimony on direct examination I think you mentioned Knickerbocker. A. I think that's the name.

Q. Yes. That was the forerunner to Browne Vintners, wasn't it? A. That's what I said.

Q. And that came into existence in 1933? (777) A. That's what I said.

Q. And Knickerbocker—those who were in Knickerbocker transferred over into Browne Vintners? A. I only heard that. But I wasn't a party on it. I didn't represent anybody at that time.

Q. Well, you knew of the combine at that time, did you not? A. Only by hearsay.

Q. Only by hearsay. A. Oh, yes. I had nothing to do with it.

Q. When I am talking about the combine I am talking about the bootlegging combine. A. Oh, no. I represented Reinfeld. I knew nothing about anybody interested in Knickerbocker but Mr. Reinfeld.

Q. Well, your brother, Nathan, was interested in Knickerbocker? A. Never; he was never in a conference and never was present at any other meetings with Reinfeld and myself on that matter.

Q. Well, he was a director in Knickerbocker. A. I told you how he became a director.

Q. No, I am asking you, Mr. Kessler; he was a director in Knickerbocker, wasn't he? A. The only time I remem-

bered that is when you told me in your office, when you examined me.

Q. Well— A. You reminded me that he was and I assumed that he was.

(778) Q. Well, was he or was he not? A. A director?

Q. Yes. A. I don't know of my own knowledge. I'm inclined to think that he was.

Q. And he was also a director in Browne Vintners? A. I know he became a director in Browne Vintners.

The Court: When did he become a director in Knickerbocker, do you remember?

The Witness: This was all in 1933, your Honor.

The Court: All in 1933.

Q. I believe you said—you testified that you were asked to become a director, did you not? A. Reinfeld asked me to become a director. I said no, I wouldn't, but I would permit my brother to be.

Q. Yes. And you recommended your brother. A. That's right.

Q. And stock was issued in his name, isn't that so? A. I don't know.

Q. And he fronted for somebody else? A. He never had stock that—he told you in your office that he didn't know that he ever had stock, when we were both there, when you examined us. Now, if the record shows he had stock, he had it, but he says he has no recollection of having stock; if he did, he never had it in his possession. (779) But he has no recollection of having it; and I certainly have no recollection of his having it.

Mr. Tyne: No further questions.

Mr. Van Riper: Just a minute, Mr. Kessler, if you will, please.

Samuel I. Kessler—for Defendant—Redirect

Mr. District Attorney, you apparently referred to a document with reference to this suit, when you asked Mr. Kessler a question. May I see it, sir?

(Produced by Mr. Tyne.)

Mr. Tyne: Note on the record that I handed the document to Mr. Van Riper.

Mr. Van Riper: This apparently is in the Supreme Court of New York, Mr. District Attorney. May I ask whether or not you have any evidence that Mr. Kessler was ever served in a suit, which you started in the State of New York?

Mr. Tyne: I produced the record in which he is named a defendant—

The Court: No, the question is do you know. If you don't know, say so and stop all this.

Mr. Tyne: I have no knowledge.

Mr. Van Riper: You have no knowledge as to whether or not he was served, is that right, sir?

Mr. Tyne: I have no personal knowledge, no.

Mr. Van Riper: Thank you. Well, do you have any (780) knowledge?

Mr. Tyne: No official knowledge. This was in 1939, mind you. I wasn't even in the United States Attorney's office at that time. At least it is marked filed 1939. So I couldn't have any official knowledge.

Mr. Van Riper: Well, is there any record that you know of that shows that he was served?

Mr. Tyne: I have already answered that.

Mr. Van Riper: All right. I take it your answer is no.

Redirect examination by Mr. Van Riper:

Q. Mr. Kessler, just one more question or two that I neglected on direct examination. At any of these con-

ferences at which Reinfeld attended, you attended and Rutkin attended, was there ever any threat made by Rutkin? A. Oh, never; no suggestion of it.

Q. Did Reinfeld ever tell you at any time or did he ever say at any time in your presence that Rutkin had threatened him or had intimidated him? A. There was never any suggestion. If there were, do you think I would let him go on with Zwillman and Stacher and sign a release?

Mr. Tyne: I object to that and ask that it be stricken out.

(781) The Court: I don't know whether you would or not. It is not responsive. Strike it from the record.

Mr. Van Riper: That's all.

* * *

The Court: I want to note for the record, Mr. Kessler, while you are here, that comment that I made was not meant in any derogatory way at all; I mean it was just simply a comment that that matter had nothing at all to do with it. It was not in any way intended, even remotely, as a criticism of your comment that you would not allow him to sign the release. I don't know how it sounded to anybody else, but in order to do away with any possible misconstruction of my words I want that said for the record.

Mr. Kessler: I didn't take any exception to it.

The Court: No. I want it said for the record.

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Vol. II

TRANSCRIPT OF RECORD

(Pages 499 to 1018)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 195

JAMES RUTKIN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JULY 18, 1951.

CERTIORARI GRANTED OCTOBER 8, 1951.

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Harry Davis—for Defendant—Direct

HARRY DAVIS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Davis, where do you live, please? A. Wyoming Avenue, Maplewood.

• • • •

(782) Q. And what is your business, Mr. Davis? A. Real estate.

• • • •

Q. Mr. Davis, do you know Mr. Rutkin? A. Yes.

Q. Do you know Joseph Reinfeld? A. Yes.

Q. How long have you known Rutkin? A. All my life.

Q. How long have you known Reinfeld? A. About twenty-five years.

Q. Mr. Davis, were you a stockholder in the Browne Vintners Company? A. Yes.

(783) Q. Do you recall how many shares of stock you had? A. 31.

Q. It was your own stock? A. Yes.

Q. You didn't front for anyone? A. No, sir.

Q. And no one fronted for you? A. No, sir.

Q. Do you recall the time when Browne Vintners was sold to Seagram's in 1940? A. Yes.

Q. I mean you recall the occasion that it was sold? A. Yes.

Q. Now, at that time where were you living, Mr. Davis? A. I was living in 28 Parker Avenue in Newark and I had an apartment for my business in New York.

Q. Whereabouts in New York was your apartment? A. Park Central Hotel.

Q. Was there a meeting at your apartment in the Park Central Hotel with reference to the sale of Browne Vintners to Seagrams? A. Yes.

Q. Was Mr. Reinfeld at that meeting? A. Yes.

Q. Mr. Rutkin at that meeting? (784) A. Yes.

Q. Mr. Zwillman? A. Yes.

Q. Mr. Stacher? A. Yes.

Q. And you brother Joe Davis? A. Yes.

Q. Anyone else? A. No.

Q. Now, will you please tell us what was said at that meeting with reference to the sale of Browne Vintners to Seagrams? A. Mr. Reinfeld said that he had an offer—he was trying to sell the company and he had an offer from Seagram for $7,500,000 and thought it was advisable to sell.

Q. Did he say why he thought it was advisable to sell? A. Well, he said we were under financed and there was a lot of pressure of some kind.

Q. Did he elaborate on what the pressure was? A. Well, he said something about himself being investigated or something, I don't know; I don't remember just what it was.

Q. Now, then, did he ask the members present whether or not they wanted to sell? A. Yes.

(785) Q. And whom did he ask? A. He asked my brother, then he asked myself, he asked Mr. Zwillman, Mr. Stacher and Mr. Rutkin.

Q. He asked each one? A. Asked each one separately.

Q. And did each one indicate a willingness to go along? A. Yes.

Q. And was that the substance of that meeting? A. That was about all that was said.

Q. And after that you were advised, some time subsequently, that the company had been sold? A. That's right.

Q. And you received your money for your stock? A. Yes.

* * *

Harry Davis—for Defendant—Cross

Cross examination by Mr. Tyne:

Q. You are a brother to Joe Davis? A. Yes.

Q. Who was on the stand here? A. Yes.

Q. You were the Harry Davis connected with this bootlegging combine in the early 1930's?

(786) A. Yes.

Q. You were part of the Davis, Stacher, Zwillman group? A. I was a member of the Reinfeld Company. I didn't know there were groups. Maybe each one had their family or something.

Q. A part of the Reinfeld Company? A. Yes.

Q. Was it a corporation?

The Court: When was that? When was that?

The Witness: It was in those prohibition days.

The Court: In those prohibition days.

The Witness: There was only one company; it was the Reinfeld Company. We all had a piece of it.

The Court: Was Zwillman part of the Reinfeld Company?

The Witness: Yes.

The Court: What you call the Reinfeld Company was (787) the whole group?

The Witness: That was the whole thing.

The Court: The whole group?

The Witness: Yes.

Q. And when did you come into the so-called Reinfeld Company? A. About '28, I guess.

Q. '28? A. (The witness nodded.)

Q. Did you come in with your brother and Stacher and Zwillman? A. I came in at the same time as my brother.

Q. Well, was that the same time that Stacher and Zwillman came in, too? A. Well, that I wouldn't remem-

ber. My brother went in and I was part of my brother's interest.

The Court: Did you come in at the same time Zwillman and Stacher did? Answer the question.

The Witness: Well, yes.

Q. How much money did you put into the so-called Reinfeld Company? A. I don't remember.

Q. Not at all? A. I wouldn't remember, no.

The Court: Well, you put in some, didn't you?

(788) The Witness: Yes. It couldn't have been much.

Q. It couldn't be much?

The Court: You didn't have much, did you?

The Witness: No.

Q. How much did you get out of it? A. I don't remember.

Q. There were pay-offs and divisions from this 1928 or '29 up until the time of repeal, isn't that so? A. That's right.

Q. And this combine terminated in 1933, did it not? A. Yes.

Q. Or late '32? A. Yes.

Q. And you were paid off from time to time all during those years. A. That's right.

(789) Q. How much money did you receive in any one year during the existence of this bootlegging operation, from the time you got in, you say in 1929, to 1932?

The Court: Let me tell you before your answer, if you can't remember exact figures, give us your best recollection.

A. I don't remember.

The Court: You don't remember any of these, do you? You don't remember what you put in.

The Witness: No.

The Court: You don't remember what you got in any year?

The Witness: There was no record.

The Court: No. You lost your memory, did you? All right, proceed.

(790) Q. You are in the liquor business, aren't you?

A. No, sir.

Q. Is your brother, Joe Davis, in the liquor business?

A. Yes.

Q. Were you in the liquor business any time since 1940?

A. Yes.

Q. Under what name? A. Capital Wine and Spirits.

Q. Capital Wine and Spirits? A. And Spirits, yes.

Q. Who was associated with you in that business? A. Mr. Pokrass.

Q. In that business did you have a license revoked?

A. No, sir.

(791) Mr. Van Riper: If the Court please, I object to an unfair statement like that and I ask that it be stricken.

The Court: Well, I frankly am not impressed by this witness or his brother, and I will not strike it from the record; I think that he is using a subterfuge of saying I don't remember. As far as the particular question is concerned, I don't see the

materiality, and that is the only reason I will strike it.

Mr. Van Riper: May I have an exception to your Honor's characterization of the witness?

The Court: Yes, you may. I am stating my opinion of this witness.

Mr. Van Riper: Yes, sir.

The Court: (Continuing) From his remarks on the stand. Your objection is noted.

* * *

Q. Who else was associated with you in the Capital Wines & Liquor Company other than Pokrass? A. Charles Cook.

Q. And who else? A. That's all.

* * *

Q. When did that terminate? (792) A. Around 1945.

Q. And where was your place of business? A. In the Bronx.

* * *

Q. Was it a whole distributing company? A. Yes, sir.

* * *

Q. Now, was Zwillman associated with you in this business? A. No, sir.

Q. Did you ever act as spokesman for Zwillman? A. No, sir.

Q. At no time? A. No, sir.

Q. Going back to the bootlegging days? A. No, sir.

(793) Q. You say you had an apartment in the Park Central Hotel and one in Newark, is that right? A. I lived in Newark with my family.

Q. You lived in Newark with your family? A. Yes, but I had my business in New York and I had to stay over there.

Harry Davis—for Defendant—Cross

Q. You maintained this apartment in the Park Central Hotel? A. Yes.

Q. It was a large suite, wasn't it? A. Yes.

Q. Very elaborate and expensive suite? A. I had a very big business.

* * *

Q. But I ask you, it was a very lavish and expensive suite, wasn't it? A. I would not say that, $140 a month.

Q. How many rooms? A. Two.

Q. Did you call this meeting that you testified to in the Park Central Hotel? A. No, sir.

Q. Who did? A. My brother called me one day and told me that Reinfeld wanted to see myself and my partner at my apartment. My (794) partner wasn't there but I could represent him, so I came down myself.

Q. Who was your partner? A. Pokrass.

Q. Pokrass? A. Yes.

Q. He was also a stockholder in Browne Vintners, wasn't he? A. Yes, sir.

* * *

Q. Did you get in touch with Rutkin to have him come up there? A. No, sir.

Q. Did you get in touch with Zwillman? A. No, sir.

Q. Did you get in touch with Stacher? A. No, sir.

Q. You didn't get in touch with anybody? A. No, sir.

Q. Why was your apartment selected for this meeting?

Mr. Van Riper: Now, if the Court please—

Q. (Continuing) If you know.

Mr. Van Riper: —I object to that; how can the (795) witness say?

The Court: If he knows, let him say.

Who selected the apartment? Who selected your apartment for that meeting that you testified about?

The Witness: My brother called me and said Mr. Reinfeld wanted to see me and thought they could go up to my apartment.

• • •

Q. In other words, everybody was coming to see you, is that what I understand your testimony to be? A. My brother called me that Mr. Reinfeld wanted to see me and my brother, and he thought we could meet at my apartment.

Q. Well, was it your brother, then, that fixed your apartment as the meeting place? A. That's right.

• • •

Q. How long did this meeting—strike it out. How much time did this meeting consume? A. Not very long.

Q. How much? (796) A. A half hour, maybe a little longer, not much.

Q. Will you tell us when this meeting was held? A. 1940.

Q. What part of 1940? A. About the middle of the year, I think.

Q. The middle of the year of 1940? A. It might be in the latter part of the year, but I think it was the middle.

Q. It would be about the summer? A. Yes.

Q. Were you holding an office in the Browne Vintners at that time? A. No, sir.

Q. Were you one of the directors? A. No, sir.

Q. Were you a stockholder? A. Yes, sir.

Q. And you were representing yourself and Pokrass, is that right; did I understand you to say that, at this meeting? A. Yes.

Q. Now, whatever you said for Pokrass was all right? A. That's right; we were partners.

Q. At this meeting you discussed the sale of Browne Vintners, is that right? A. Yes, sir.

(797) Q. Who did most of the talking? A. Mr. Reinfeld.

Q. Did you do any talking? A. No.

Q. Not a word? A. No, sir.

Q. Nothing at all? A. No.

Q. Did I understand your testimony to be that you didn't say a word at that meeting at all? A. I might have said hello and may have talked with the people, but I had no thought about discussing the proposition, it was put to me and I agreed on it.

Q. You agreed on it? A. Yes.

Q. Wasn't there any discussion at all? A. If there was, I don't remember what they were discussing.

Q. You don't remember? A. No.

* * *

The Court: How much did you have in the Browne Vintners?

(798) The Witness: Investment?

The Court: Yes.

The Witness: 31,000.

Q. How much did you get out of it? A. Around 90, in round figures; I don't know.

Q. Were you called in on matters of policy in connection with Browne Vintners? A. No, sir, never took an active part in it.

* * *

Q. You testified that you can't recall any conversation at all, is that right?

The Court: He only had $31,000 involved, and it developed to 90,000.

Q. (Continuing) Yet you can testify specifically, as you have already testified to, that Reinfeld asked each one, individually, whether they wanted to sell the company, is that right? A. That's right.

(799) Q. Is that the only thing that you recall at this meeting? A. That's all.

Q. Nothing at all other than that? A. That's all.

Q. Well, was there anything discussed other than that? A. Well, maybe people said that they don't know why they are going to sell; I don't remember the whole conversation.

Q. Not maybe.

The Court: Do you remember any of the conversation?

The Witness: No, I don't, your Honor.

The Court: You don't remember any of it?

The Witness: Except we had an offer and we should sell, it was a good amount and we are underfinanced and there is pressure brought on Mr. Reinfeld, or someone, and it would be advisable to sell. Reinfeld ran the whole company, what difference if I said it shouldn't sell or not, he could say "sell," so what difference?

Q. Well, now, wait a minute. You want us to believe that it wouldn't make any difference what you said if you didn't want to sell? A. That's right.

Q. This meeting was called in your apartment in the Park Central Hotel? A. Yes.

Q. And these people were there—

(800) The Court: Did anybody protest against the sale of it?

The Witness: I don't know, I don't remember, really.

* * * * *

Q. Have you searched and exhausted your recollection to find out? A. To the best of my understanding, when he asked each one of us how we stood and that we were willing to sell, I think everybody said yes without any discussion.

Q. Without any hesitancy, is that right? A. It might be so.

Q. And the meeting lasted a half hour? A. That's all, about.

Q. It wouldn't take a half hour to say that, would it? A. No.

Q. Were any figures presented to you? A. No.

Q. You mean you were testifying that you didn't even know what the company is being sold for? A. I told you, I guess if you—I told you what it was being sold for.

Q. I asked you if any figures were presented to you and you said no.

(801) The Court: I think he meant in addition to the 7½ million.

Q. Was that figure submitted to you, 7½ million? A. Yes.

Q. Were any other figures submitted to you? A. No, sir.

* * * * *

Q. Did Zwillman participate in the conversation, any conversation? A. He may have, they were all seated.

Q. You don't know? A. I don't know.

Q. Did Stacher say anything? A. No; I don't know outside of saying he agreed to sell.

Q. Did Rutkin say anything? A. I wouldn't remember that.

Q. You wouldn't remember. You weren't all afflicted with colds, or you suddenly lost your voices at that time? A. I was feeling fine.

Q. Feeling fine. You know that the company had been offered for sale, did you not? A. Before that?

Q. Yes. A. No, sir.

(802) Q. Well, had it been offered for sale at any time either before or after this meeting? A. I never knew it was offered for sale until that day that I heard them decide that they wanted to sell.

Q. I beg your pardon? A. The first time I knew it was for sale, or that they were going to sell, was that day that I sat in at that meeting.

The Court: Did you hear of any offer from anybody else except the people who finally bought it for 7½ million?

The Witness: Well, later on, when it was just about to be closed, they said they spoke to National and Schenley and they thought they would be interested in it, but that was when we were waiting for a call from Seagrams to take it.

The Court: Where was that?

The Witness: Oh, I don't remember.

The Court: You don't remember where that discussion was held?

The Witness: I think it was in Browne Vintners office.

Q. Who presented those propositions to you? A. Well, it was sitting around and Mr. Reinfeld spoke about it.

Q. Spoke about these offers? A. Yes.

(803) Q. And didn't he submit those offers to you? A. No, sir.

Q. He did not? A. No, sir.

Q. Did you have anything to say about them? A. No, sir.

Q. Did you ever ask whether or not we could get a bigger offer than 7½ million, plus the payment of liabilities? A. I never was active in the company, there were people that ran the company, and whatever I did or said wouldn't have made any difference anyway.

. . . . .

Q. Is this a fair statement of your testimony: you didn't know anything about the company, you didn't have anything to say about it, and that if you had been asked about it, it wouldn't have made any difference; is that your testimony? A. That's right.

Q. And notwithstanding that, this meeting was held and you were asked specifically if you would agree to sell it? A. Well, I was a big factor in the business, I handled (804) their merchandise.

Q. You were a big factor in the business? A. Yes, sir.

Q. And that is the only reason? A. I don't know.

Q. Not because you had a substantial investment in it? A. I think I had a small investment in that company.

Q. Well, whether or not you had a small investment or large investment, did anybody ever tell you not to object or to protest to anything that was done? A. No.

Q. No. You had the power of speech? A. Yes, sir.

Q. You were a businessman? A. Yes.

Q. You say you had a very extensive business in this Capital Wines & Liquor? A. That's right.

Q. You are certainly of average intelligence, with a wealth of business experience, is that right? A. Yes, sir.

The Court: You are not in the Capital Wines?

The Witness: We sold our business.

The Court: You sold it?

The Witness: Yes, sir.

(805) The Court: When did you sell it?

The Witness: Around '46; got quite a little money for it.

Q. You testified during this meeting that Reinfeld said there was some pressure being exerted, and you said, "I didn't know what it was." What was said by Reinfeld about any pressure that was being exerted, if you can recall that? A. I don't recall it.

Q. Did he say that pressure was being exerted against him? A. This is a long time ago and I don't remember.

Q. But you were testifying under oath? A. That's right.

Q. I want the truth. Now, what did he say, if anything? A. I don't remember.

* * * *

Q. So that when you made that statement before, to the effect that Mr. Reinfeld said that he was under pressure— A. Yes.

Q. You didn't know what you were testifying to, did you? A. I knew what I was saying, yes, and whatever I said I will stand by and repeat it again.

Q. And you will change it to your convenience, won't you? A. I will not.

* * *

(806) Q. Well, what did Reinfeld say, if anything, about pressure being exerted against him? A. I don't remember.

Q. You don't know. Did he make the statement that pressure was being exerted against him? A. Yes, sir.

Q. Now, what did he say? A. He said that we should sell the company, we can get a good price, we are underfinanced and there is certain pressure being brought against him. I remember that.

Q. You remember that. What did he say about the "certain pressure" that was being brought against him? A. I don't know.

Q. Did you ask? A. I don't know; maybe someone else asked in the room.

Q. Well, what was said, if somebody asked? A. I don't know.

Q. You don't know? A. Yes. Do you want me to say something I don't know?

The Court: No, no, we don't want you to say something you don't know.

The Witness: He keeps asking me about something I don't know.

The Court: He wants you to say about things you (807) do know.

The Witness: I don't know.

* * *

Q. You didn't think it important enough to ask him, "Hey, Joe, what about this pressure you are talking about?" You never asked him that? A. No.

Q. And you never heard that explained in this meeting? A. No. I was too small a man to ask any questions.

Q. Whether or not you were too small or not, it was held in your apartment and you were a stockholder.

The Court: You were asked whether you were interested to sell or not?

The Witness: That's right.

Q. And that is all that you remember of this conversation at this meeting that took a half hour or so? A. That's right.

* * *

Harry Davis—for Defendant—Redirect, Recross.
(Mrs.) Peggy Thum—for Defendant—Direct

Redirect examination by Mr. Van Riper:

Q. What did you mean a minute ago when you said you were "a big factor in the business"? (808) A. Well, our wholesale business, the one I was connected with, the distributing company, was a very large company, it was one of the largest companies in the country.

Q. At that time, then, you were engaged in the wholesale liquor business, is that so? A. That's right.

Q. And were you handling Browne Vintners' products? A. Yes, sir, I was a big customer there.

Q. Buying from them and selling it to other dealers, is that so? A. That's right.

Recross examination by Mr. Tyne:

Q. Well, now, if you are buying from Browne Vintners, you had interest both ways, didn't you, as a purchaser of liquor and the sale of it in connection with Capital Wines & Liquors, and also the sale of it by Browne Vintners to you? A. That's right.

Q. So you profited doubly, didn't you? A. What's wrong with that?

(809)

(Mrs.) PEGGY THUM, was called and sworn on behalf of the defendant, and testified as follows:

Direct examination by Mr. Van Riper:

Q. Mrs. Thum, where do you live, please? A. In Milburn.,

Q. And you live there with your husband, you are not now engaged in business, are you? A. No.

Q. May we have your address, please? A. No. 13 Reeve Circle.

Q. Do you know Mr. Rutkin? A. I do.

Q. How long have you known him, Mrs. Thum? (810) A. As long as I have been with Browne Vinthers.

Q. Do you known Mr. Reinfeld? A. I do.

Q. How long have you known him? A. As long as I have been with Browne Vintners.

Q. You were once employed, then, by Browne Vintners, were you not? A. Yes, sir.

Q. And when were you employed there, during what years? A. From 1934, the end of 1934, until July, 1942.

Q. And in what capacity were you employed, Mrs. Thum? A. Chief receptionist.

Q. Chief receptionist? A. Yes, sir.

Q. Where were their offices during that period of time? A. We were located in Radio City, we were located first in the RCA Building, the International Building, and the Associated Press.

Q. Now, then, as chief receptionist, was it your responsibility to meet people who came in? A. Yes, sir.

Q. And to find out who they wanted to see? A. Yes, sir.

Q. And to get them in or not get them in? A. Yes, sir.

(811) Q. (Continuing) As the case may be? A. Yes, sir.

Q. Now, did Mr. Reinfeld have an office in the Browne Vintner suite? A. Yes, sir.

Q. Were there several other offices there occupied by other men? A. There were many offices, yes.

Q. Occupied by other officers of the company? A. Yes, sir.

Q. Now, did Mr. Rutkin come there, to the Browne Vintners' offices? A. Mr. Rutkin came, I would say, occasionally. There were times when he came in two or three times a week and there was a stretch when we didn't see Mr. Rutkin for many months.

Q. Now, then, what was the system there with reference to people seeing Mr. Reinfeld, when somebody wanted to come in and see Mr. Reinfeld what did you do? A. My duty was to call his secretary and in turn she would advise the office when he was ready to see them.

Q. Now, when Mr. Rutkin came in, whom did he usually want to see? A. Usually Mr. Reinfeld.

Q. Reinfeld. And when Mr. Reinfeld was in, did he see Rutkin? (812) A. Usually.

Q. Yes. And did Rutkin have any difficulty in getting in to Reinfeld? A. Mr. Reinfeld saw Mr. Rutkin when he was not busy, yes.

Q. Now, did Rutkin sometimes talk with other officers there? A. Yes, sir.

Q. Now, did you ever see Rutkin use the offices there, I mean the rooms? A. Mr. Rutkin used all available offices that were not occupied by other people.

Q. By that do you mean that when Rutkin would come in, if a room wasn't occupied that he would go in and occupy that room, himself? A. Sometimes, yes.

Q. And how would he find out whether a room was being occupied or not? A. He would ask when he came in if there was a room available, so that he could make a telephone call, and usually, if I knew just what office wasn't being used, he usually did make a telephone call.

Q. And did he on occasion use Mr. Reinfeld's private office? A. No, sir.

Q. All the other offices? A. Yes, sir.

(813) Q. Now, then, did he ever make any phone calls from there? A. Yes, sir.

Q. Did he receive phone calls there? A. Yes, sir.

Q. Did he receive visitors there? A. Occasionally.

Q. And have you seen him there with visitors in private rooms? A. Yes, sir.

(Mrs.) Peggy Thum—for Defendant—Cross

Q. Now, did you ever see him bring any customers there? A. I saw Mr. Rutkin bring in two customers, or maybe two or three customers at various times while I was there.

Q. Do you recall any of the customers that he brought in? A. Yes, sir, I do, I remember Mr. Jack Dempsey and Mr. Ben Marden.

Q. And did you see him entertain those gentlemen there at the bar? A. Yes, sir.

Q. Was there ever a time when Mr. Reinfeld told you not to let Mr. Rutkin in? A. No, sir.

Q. Did Rutkin appear to exercise authority around the offices? A. No, sir.

* * *

(814) *Cross examination by Mr. Tyne:*

Q. Just two or three questions, Mrs. Thum, I believe you said that Mr. Reinfeld would see Mr. Rutkin if he was not busy, is that so? A. Yes, sir.

Q. And that when he came in he would ask you if he could make a telephone call and you allowed him to make a telephone call in the office? A. Yes, sir.

Q. And that he did come in there with some people? A. Yes, sir.

Q. (Continuing) At times? A. Yes, sir.

Q. Many people came in there from time to time, friends of the company, isn't that so? A. Yes, sir.

Q. And you had a bar there? A. Yes, sir.

Q. And these people would go down to the bar and get a drink? A. Yes, sir.

* * *

Stephen Joseph Gross, Jr.—for Defendant—Direct

(815) STEPHEN JOSEPH GROSS, JR., was called and sworn on behalf of the defendant, and testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Gross, where do you live, please? A. Highlands, New Jersey.

Q. And what is your business? A. Tavern owner.

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Q. In Highlands? A. In Highlands, yes.

Q. You know Mr. Rutkin? A. I do.

Q. How long have you known him? A. Oh, about 24 years or so.

Q. Do you know Joe Reinfeld? A. I do.

Q. How long have you known him? A. On the same scale.

Q. Were you interested with Rutkin and Reinfeld in liquor activities during prohibition? A. I was interested with them, but not direct, through a partner.

Q. I see. And who was your partner?

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(816) A. Harry Linden, L-i-n-d-e-n. He had another name, too.

Q. Did he have another name? A. That's right; his real name was William Ise.

• • • •

Q. Now, did you take any part in the activities of that combination? A. Well, mostly like the rest of them done, I tried to protect Mr. Linden's interest, as any other partner would do.

Q. And in doing that, did you have any contact with Rutkin and Reinfeld? A. Oh, yes, took orders from Rutkin and took orders from Reinfeld.

Q. Now, what kind of orders did you take from Rutkin, with reference to doing what? A. Well, you mean as the boats would get unloaded or where we started from?

* * *

Q. What did he assign you to do? A. Oh, like follow trucks, see that the stuff got around to warehouses, distribute it when it was sold, and check.

Q. And when you say follow trucks, you mean trucks loaded with liquor? (817) A. That's right.

Q. And you would follow them from where? A. From the warehouse, from the docks.

The Court: How would you follow them?

The Witness: By car.

The Court: By car?

The Witness: Like on a convoy.

The Court: As a guard?

The Witness: If you would call it a guard, yes.

The Court: Were you an armed guard?

The Witness: No, sir.

The Court: Who would ride with you in the car?

The Witness: Well, I have had occasion that I have seen Rutkin ride with me; I think Holtz rode—a few of them, anyway, at different times. And Linden, of course.

The Court: What was the purpose of your following them?

The Witness: To see that they would get to their destination, just follow them, protect them.

The Court: Protect them with what?

The Witness: Well, after all, the liquor is going along and at that time see that nothing was molested one way or the other.

The Court: With your fists?

The Witness: Well, I probably could use them if there (818) was an occasion, but it never happened that way.

Q. Now, what kind of orders did you take from Reinfeld? A. I would say the same thing.

Q. Doing the same thing. And would you see both Reinfeld and Rutkin on the docks when liquor was unloaded? A. I did.

Q. And were there occasions when Reinfeld gave you orders with reference to the distribution of liquor from the dock? A. It could be, yes.

* * *

Q. Was it? A. It was, yes.

Q. Now, then, how long did you stay active in that activity with Reinfeld and Rutkin? A. With those particular people?

Q. Yes, with Reinfeld and Rutkin. A. I would say until 1930.

Q. Until 1930, you got out then. Now, did you at one time go to Europe with—did you meet Reinfeld in Europe on one occasion? A. I did.

Q. When was that? A. 1929.

Q. And where did you go with him to Europe? A. Where did we go?

(819) Q. Yes. A. We just met once.

* * *

Q. Well, now, when you met him in Europe, did you stand still where you met him or did you go places? A. No, we were on our own there as a pleasure trip and a health trip at the time, and we had Mr. Reinfeld and his party in Vienna.

Q. Did you go some places with Mr. Reinfeld in Europe? A. You mean health resorts and things like that?

Q. No, did you go places with him on business? A. No, no business.

Q. Well, did you meet Mr. Reinfeld in Europe accidentally or by appointment? A. No, we were planning a trip as they were leaving and we said we would meet over there somewheres.

Q. I see. You met by an appointment that was made before you went over. (820) A. That's right.

* * *

Q. Now, when you were active in the combination with Reinfeld and Rutkin, did you ever go with Mr. Reinfeld to the home of a Captain Bailey? A. No, I didn't.

Q. Did you ever meet Captain Bailey? A. I did.

Q. With Reinfeld? A. Well, we were all there.

Q. Well, Reinfeld was there? A. Oh, yes.

Q. Whereabouts was this? A. On a dock.

Q. Whereabouts on a dock? A. Do you want the destination?

Q. Well, the town, the city. A. Shark River.

(821) Q. Shark River. And were the docks in any particular town? A. Well, there is what I call an inlet.

Q. An inlet. A. In Shark River, of course.

Q. And who was Captain Bailey? A. He was a captain of the Coast Guard in that particular section.

Q. And would he be on the dock when the liquor came in? A. He sure was.

Q. And what was he doing?

The Court: A captain of the Coast Guard of the United States of America on the dock while bootleg liquor was being brought in?

The Witness: That's right. I have to tell the truth, he was there.

The Court: Did you ever tell that before?

The Witness: I never was asked that before, sir.

The Court: Did you ever tell it at the time?
The Witness: At the time?
The Court: Yes.
The Witness: To who?
The Court: To anybody, to any law officer.
The Witness: No, I did not.

Q. What was Bailey doing there on the dock? A. Looking around; I don't know what he was doing, but he was there.

(822) Q. Did you ever see him talking to Reinfeld on the dock? A. Talked to all of us, that is anybody "in the know", what we call the know.

Q. And did you see him talking to Reinfeld? A. Yes, sir.

Q. And did he interfere with you in any way in bringing in the liquor? A. Not that I know.

Q. Or taking it away from the dock? A. No, he might have taken a bottle or so, but he never took anything away.

Q. Did Bailey confiscate any of the liquor, did he arrest anybody or anything of that kind? A. No.

Q. Now then, subsequently, Mr. Gross, did you become employed by the Vanderbilt-Dempsey Hotel? A. I did.

Q. In Miami? A. I did.

Q. Do you recall when it was you were down there? A. When it was?

Q. When you were employed at the Vanderbilt-Dempsey Hotel? A. Yes. That was in the fall of 1936.

Q. How long did you stay there? A. A couple of years.

(823) Of course, just during the seasonal part of it.

Q. It wasn't open all the year round? A. Oh, no.

Q. When you were there was Rutkin one of the owners part of the time? A. That's right.

Q. And did you see Rutkin around that time? A. I did.

Q. Now, do you recall the occasion when you were working at the Vanderbilt-Dempsey Hotel in Florida that Mr. Reinfeld came down there? A. I do.

Q. Was he staying at the hotel? A. He was.

Q. Did he come in the bar where you were? A. Yes, sir.

Q. Did he have a conversation with you with reference to interest in the hotel? A. That came later, yes.

Q. Well, when did that come? A. Well, I mean a day or so when he came around there, he was telling me how interested he was. First let me get it—

Q. Just tell us what happened in your own words. A. Well, he asked me what I was doing. I told him bar (824) manager just taking care of people in the interest of Jim. He said fine. It went on here and there, he said I will look around here. Then later he came back and said what liquors are you using so I told him what Jim had instructed me. He says, "Well, take me around." I took him from one station of the bartenders to the other. Then he would say, "What Scotch do you use;" we showed him the White Horse naturally, Wilson and Burnett's White Satin Gin. So he went off for awhile and later on he came back and he said, "This is for you" so I said, "What's that?" He said, "This is for you, take care of the bartenders." I said, "Thank you."

Q. What was it he gave you? A. $100.

Q. A hundred dollar bill. Now, did he say anything about him having an interest in the hotel? A. No, after he gave me that he said he was well interested in the hotel.

Q. He said he was well interested in the hotel? A. In this he said he was interested.

Q. Now, the whiskies that you told him you were selling, White Horse, Wilson and Burnett's, had Jim told you to sell that? A. Burnett's White Satin, Jim had told me to push, yes.

Q. And were they Browne Vintners products? (825) A. Well, I knew the White Horse so I don't know about the

rest because I am in the liquor business yet and I still have the same stock.

Q. The White Horse was? A. At that time it was. I don't know whether it is today. I didn't look at the labels.

Q. Do you know how long Reinfeld stayed there that time? A. That particular time?

Q. Yes. I don't mean any day but how many days or weeks did he stay there? A. I remember him leaving about two days later. I would say about two days later, probably three days, at that time.

* * *

Cross examination by Mr. Tyne:

* * *

Q. You live in Highlands, New Jersey? A. Highland, New Jersey, yes.

Q. What is the street address? A. 408 Navesink Avenue, or Route 36.

Q. And you say you are in the liquor business? (826) A. A tavern owner.

* * *

Q. How long have you been in that business? A. Let's see. Six years.

Q. And are you associated with William Ives? that is, William Linden, the last witness? A. That's right.

* * *

Q. Does he operate under the name of Linden or Ives in that business? A. In what business, sir?

Q. In this tavern business. A. Well,—

The Court: No, he isn't in the business now, is he?

The Witness: No, the man is dead.

Q. Oh, that's right. I asked you about your present business.

The Court: Anybody else in your business with you now?

The Witness: No, just—

The Court: Just yourself?

The Witness: Just my family, and myself, my wife and I, yes.

(827) Q. You said that you were a part of this bootlegging operation down there? A. On Linden's part.

Q. On Linden's part? A. That's right.

Q. You represented him? A. I was with him, working for him, had an interest with him.

Q. Did you have any money in this combine? A. A few cents.

Q. A few cents? A. Yes. One time we gave him $2,000—I did, anyway.

Q. To whom? A. To Linden.

• • •

Q. And to whom did you give this $2,000? A. To Linden

• • •

Q. And did he invest that for you in this liquor combine, this bootlegging combine? A. That's right.

Q. How much did he put in it, do you know? (828) A. I don't know, I don't just recall, but I know that's when it happened. He says, "Well, we have gone into this here business; we need a little cash."

Q. Yes. A. So when he had it made up, I was in with it, that's all. In those times you had a gentlemen's agreement, which was as ironclad as a piece of paper in the bank.

• • •

Q. Will you tell us when you went into this combine? A. When they went into it?

Q. When you and Linden went into this combine. A. Oh. I think it was about late in '26, just about around that time.

Q. '26? A. That's right.

Q. And you continued up until when? A. Well, till something happened, we don't know yet today, or I don't either, Linden didn't, until about 1930.

Q. Then did you go out? A. Yes, we got out all right.

Q. You got out all right, eh? A. Yes.

Q. Some musclemen moving in? A. No, no, absolutely not.

(829) Q. No? A. No, just a general squeeze—out when you are not needed, I imagine.

Q. Sort of eased out, eh? A. Eased out, that's right.

Q. And was Rutkin in it at that time? A. Oh, yes.

Q. Yes. How much money did you—

The Court: Who was squeezed out?

The Witness: Well, the partners of Linden. There was three in that line. Of course I was with Linden. I don't know nothing about the rest. They were all squeezed out. I mean—I say "squeeze-out"—something just happened; I don't know what the money—what happened to it, or what happened to the other folks; we were out.

Q. You were out? A. In 1930.

Q. Yes. But you had a gentlemen's agreement and it was ironclad. A. That was the gentlemen's part that I am referring to.

The Court: You said ironclad and good as a bank.

The Witness: Yes.

The Court: I hope it was not.

The Witness: It was not, on this gentleman's part.

(830) Q. Then, you say, you bowed out, is that right? A. Bowed out, yes.

The Court: You didn't bow out; you were squeezed out. Anyhow, you were out.

The Witness: That's right. Definitely.

The Court: All right.

Q. How much money did you get out of this combine? A. Well, I imagine, whenever they had a split-up—how much?

Q. Yes. A. Well, I don't know. I would probably wind up with—average as much as a hundred a week, for my security.

Q. Yes. A. Maybe a little more.

Q. A little more? A. Not much. But I probably would have had a little more.

Q. And you never objected to anything that you got.

* * * *

A. I had no reason to object.

Q. You had no reason to object. And when it was liquidated, you got your liquidating dividend and got out, is that right? A. Well, we did a little objecting at that time, but it just didn't happen. The man was sickly anyway, probably (831) discouraged, didn't care any more.

Q. Didn't what? A. Didn't care any more.

Q. Didn't care. A. He was discouraged. He was sickly.

Q. Who was that? A. Mr. Linden.

* * * *

Q. He didn't care any more and he just got out? A. He did. But objections were overruled.

Stephen Joseph Gross, Jr.—for Defendant—Cross

Q. Objections were overruled. And was it in 1929 that you went to Europe? Is that right? A. That's right.

Q. That cost you more than a hundred a week, didn't it? A. It didn't cost me that. Linden paid for that.

Q. Oh, Linden paid for that? A. Oh, yes. I didn't have enough to go there.

Q. Oh, I see. Were you over there on a pleasure trip? A. That's right.

Q. And Linden financed that for you, did he? A. That's right.

Q. It was a combination of pleasure and health trip, I think you said; is that right? A. That's right.

(832) Q. Now, you testified, Mr. Gross, that you were down there on the docks and that you would ride a truck, drive in a car, behind a convoy? A. Yes.

Q. And this convoy consisted of trucks loaded with liquor? A. That's right.

Q. That had been brought in, is that right? A. That's right.

Q. And you rode along with the truck to give it—with the convoy—to give it protection, is that right? A. That's what I said.

Q. Did you ride the front or the rear? A. We rode probably back and forth—in front of it, back again.

Q. Yes; circling it all the time? A. Yes.

Q. You were protecting it from being hi-jacked, weren't you? A. I don't say that, no. I was never afraid of it.

Q. Well, were you afraid of one of the drivers driving off with a truckload of it? A. Still protecting it that way, yes, sir.

(833) Q. That would be hi-jacking it too, wouldn't it? A. If the driver went away with it?

Q. Yes. A. Well, it could be.

Q. And you weren't afraid at any times that this convoy would be hi-jacked? A. Never had anything in my

thoughts about hi-jacking. I just went along with it to see that—not me alone.

Q. Yes. A. Maybe four or five of us.

Q. Four or five of you in the car? A. That's right; sometimes alone.

Q. And Rutkin was one of them? A. Not all the time, no.

Q. Well, was he at any time? A. He may have rode with me.

Q. What kind of a car did you drive? A. At that time?

Q. Yes. A. Cadillac coupe.

* * *

Q. Was there more than one car protecting this convoy? A. Oh, there was a lot of cars. One car couldn't protect all of it or go along with it. Some trucks had to (834) go one way and another truck would go to the warehouse this way and another—all different destinations, distributed around.

Q. And you worked with the convoy that was going to a particular destination. A. That's right.

Q. These trucks rode at night, didn't they? A. Yes; and I rode in the day time.

Q. You rode in the day time too? A. When we delivered them, after they got away from the warehouse.

Q. After they got away from the warehouse you delivered them? A. I used to deliver them, yes.

Q. And you said in answer to his Honor's question that you were not armed in any way? A. That's right.

Q. Not even a baseball bat? A. Maybe I had a lug wrench or something in the car, but never armed, no, sir.

Q. Pretty handily situated, too, wasn't it? A. No, nothing of that sort.

Q. Nothing like that at all? A. That's right.

Q. This thing was all peaceful? (835) A. As far as I know it was always peaceful, yes.

Q. You never heard of any of these trucks being hi-jacked? A. No.

Q. All during this period? A. Oh, I have heard of trucks being hi-jacked but I didn't hear of any in our line. That was long before that part.

Q. Well, the drivers that you had drive these trucks, you had confidence in them, didn't you? A. I think we did, yes.

Q. Yes; otherwise you wouldn't have hired them. A. That's right.

Q. And you didn't think that they were going to run away with any of the trucks, did you? A. No.

* * *

Q. You mentioned a Mr. Bailey, a Captain Bailey? A. Yes.

Q. And you said that you met him at Shark River? A. He was at the dock, yes.

Q. At the dock? A. Yes.

Q. And where was his house? Right down there on Shark (836) River? A. I wouldn't know. You mean the Coast Guard Station?

Q. Yes. A. Yes, I believe it was—going down there, it would be to the right, on the waterfront, on the right of the—

Q. Is that where you would bring the liquor in? A. To the left, we would come in the inlet—on the left was the dock, unloading dock; the Coast Guard Station is on the right.

Q. Yes, right there. A. Oh, yes, not far away.

Q. That's where Bailey's house was, wasn't it? A. That's where—?

Q. The Coast Guard Station, or whatever you want to call it? A. The Coast Guard Station, yes.

Q. The Coast Guard Station. A. That's right.

Stephen Joseph Gross, Jr.—for Defendant—Cross

Q. And it would be brought in in boats, isn't that so? A. That's right, from another place.

Q. From another place? A. Another ship.

Q. You testify that you saw Mr. Reinfeld down at the Dempsey-Vanderbilt Hotel in Miami? A. That's right, sir.

Q. And that he gave you a hundred dollar bill? (837) A. That's right.

Q. For you to take care of the bartenders? A. That's right.

Q. How many bartenders did you have? A. Oh, we had plenty, but at that particular time I know there were seven.

Q. Seven dollars apiece or— A. No, I gave them five.

Q. What? A. I didn't say what I gave them. I gave them five.

Q. Oh, you gave them five? A. Yes. I went south myself.

Q. In other words, you were taking off two and giving them five, each, you gave them thirty-five and you took the rest. A. That's right. He said to take care of them. He didn't stipulate what to give them.

Q. I see. He left that up to your good judgment and discretion? A. I hope. I think I was well trusted enough at that time.

Q. Sure. A. By him, too.

Q. And at that time when he gave you a hundred dollars he said, "I am well interested in this"? A. That's right, and I believe at the time he was. I never thought it would be anything different.

(838) Q. Well, he was interested in the liquor, isn't that right? A. It should be. It could be in Dempsey's too.

Q. Well, it was given to you under circumstances that related directly to the liquor. A. Yes, that's right. He said I am doing very well, good job.

Q. Yes. A. That's right.

Q. Did he tell you that he was interested in Browne Vintners? A. Oh, no.

Q. He didn't tell you that? A. I almost knew that. I guess the whole City of Newark knew that.

Q. Yes, yes. I am talking about Reinfeld. A. That's right.

* * *

Redirect examination by Mr. Van Riper:

Q. Mr. Gross, you said something about your objections were overruled, about getting out of the business. Who overruled the objections?

* * *

A. What is it?

Q. Well, you said your objections were overruled. A. Oh. You mean at the time?

(839) Q. Yes. A. Well, we went up to the office at 60 Branford Place, and naturally, you know, there was a gathering there, Mr. Linden had a talk, I know, with Reinfeld personally,—

Q. Joe Reinfeld? A. Oh, yes.

The Court: Who else was there?

The Witness: Oh, probably Sammy anud Sol, which is the most ones I would be frequently around with.

Q. You mean Sammy and Sol who? A. They were brothers of Joseph.

Q. Sammy and Sol Reinfeld? A. Yes.

The Court: Rutkin there?

The Witness: Rutkin? Maybe not at the parparticular time—

The Court: Well, you don't recall?

The Witness: No. I don't recall.

Q. What did they say about your interest in the business? A. What did they say?

Q. Yes. A. Just a negative answer, that's all.

Q. No. A. No.

Q. I see. That was all there was to it? (840) A. That's all there was to it.

Q. Yes. A. As far as that, I know I tried to get a few cents, maybe a year later; the man was broke, he was sick, and I—this is really a rough one; I think Mr. Reinfeld did loan him a few cents, which he never got back—

The Court: Don't tell us what you think.

The Witness: Well, I know he didn't.

The Court: Don't be volunteering any information.

The Witness: All right.

Q. Just one more question. When you were convoying this liquor in these trucks did the Reinfelds ever ride with you too? A. Oh, yes.

Q. Which Reinfeld? A. All of them.

Q. Joe, Sammy and Sol? A. Joe, Sammy and Sol, Lou Holtz, different times, different dates. There would always be somebody different.

* * *

Recross examination by Mr. Tyne:

Q. You say there were different times, different dates, somebody different. A. Well, we were riding steady, day and night. There was (841) different times, different boats, that would come in, different working days, what we would call them. Maybe Reinfeld, Sol, Joe, Sammy, somebody would be there, the same as Rutkin would be there.

Q. Well, didn't you testify that Mr. Reinfeld was down there checking off the incoming—

The Court: He said he rode with them. The Reinfelds rode with them. Everybody rode with them, Holtz, rode with them,—

The Witness: That's right.

Q. All right. One question. Didn't you testify that Reinfeld was down there checking off the liquor? A. Did I say checking off?

Q. Yes. A. It could be, then, if I did say that, that's true; they all checked.

Q. Wasn't that Joe Reinfeld's primary job, so far as you were able— A. His primary?

Q. Yes. A. They all had all different jobs—riding, unloading, or whatever you would call it; everybody chipped in, as any other partner would.

Q. Yes. A. Till it got too high, of course. Then they gave a lot (842) of other orders, Rutkin gave orders, Joe gave orders, maybe Holtz gave orders.

Q. Well, that was in connection with getting the stuff moving, isn't that right? A. Oh, yes; and distributed, selling, and everything else. You know, general practice.

* * *

Q. Did you give orders too? A. No.

* * *

SAMUEL W. PASS, called as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Pass, where do you live, please? A. 417 Park Avenue, New York.

Q. That's the kind of voice we like to hear. And what (843) is your business, sir? A. I am a business broker.

Q. What do you mean by business broker? A. Well, I try to buy businesses and re-sell them.

Q. You act as an agent for the purchase and sale of businesses, is that it? A. Yes, sir, that's it.

Q. I see. Do you know Mr. Rutkin, the defendant here? A. Yes, sir.

Q. And how long have you known him, Mr. Pass? A. Since about 1935.

Q. And do you know Mr. Reinfeld? A. Yes, sir.

Q. Joe Reinfeld, that is? A. Yes, sir.

Q. And how long have you known Joe Reinfeld? A. I met Mr. Reinfeld in the fall of 1943.

Q. And what were the circumstances under which you met Mr. Reinfeld? A. I first met Mr. Rutkin and asked him whether he would take me to Mr. Reinfeld, approximately September 1943.

Q. And did he take you to Mr. Reinfeld? A. Yes, sir, he did.

Q. And where did he take you to meet Mr. Reinfeld? A. To the offices of Browne Vintners.

(844) Q. And do you know where it was located at that time? A. Yes, sir; at 50 Rockefeller Plaza.

Q. And that was the first time you met Mr. Reinfeld? A. Yes, sir.

Q. Now, then, did you have a discussion there with Mr. Reinfeld and Rutkin? A. Yes, sir. I told Mr. Rutkin and Mr. Reinfeld both that I thought I could buy the White Rock Company.

Q. The White Rock beverage, is that it? A. Company, yes.

Q. All right. A. And would they be interested in the purchase of that company. Mr. Reinfeld said he would be very much interested; and I asked him when he would like to meet Mr. T. R. Williams, who was the chairman of the Board of that company. He says, "You can bring him along any time you wish." And it was two or three days after that that I brought Mr. Williams, chairman of

the Board of the White Rock Company, to the offices of Browne Vintners to meet Mr. Reinfeld. Mr. Reinfeld, Mr. Owens, Jack Owens, who was (845) Mr. Reinfeld's advertising agent, Mr. Williams and myself went to lunch and we started negotiations for that company, the purchase of the company. That lasted fully six months.

Q. Now, during that time, during that six months, did you have conversations—with whom did you have conversations? A. Well, I went to the offices of Browne Vintners at least once a week for six months.

Q. And who did you see when you went there? A. Mr. Reinfeld.

Q. Then I suppose you negotiated with other people on the other side, is that it? A. Oh, yes. I went back. At one time Mr. Reinfeld and myself went to the offices of T. R. Williams, who was chairman of the Board, who is connected in a lumber business, at the head of a lumber company. At another time I brought another member of the Board of the White Rock Company, Sydney Reinstein, to the offices of Browne Vintners, did everything I could to keep the deal alive, keep the interest alive.

Q. And did that deal have to do, substantially there, with the buying of approximately 45,000 shares of stock and the acquiring of enough more stock to make up a hundred thousand shares? Was that substantially— A. The total capitalization of the company was 250,000 shares of common stock, and the directors of the White Rock (846) Company owned approximately 125,000 shares of stock, which was the control of the company. Under our arrangement, all the rest of the stockholders were invited in, had the deal become a reality, at the same price. We had to do that, according to law.

Q. Now then, did there come a meeting of the minds, so to speak, between the two parties on the White Rock sale? A. Yes, the White Rock Company—that is, the

directors of the White Rock Company were sure that Mr. Reinfeld was going to buy the company; he so expressed himself on a number of occasions.

Q. He said that he was going to buy it? A. He was going to buy it.

(847) Q. And did he buy it? A. No, sir, the deal finally blew up without much notice.

Q. And how did you find out that the deal had blown up, Mr. Pass? A. Well, Mr. Reinfeld was to have deposited $1,250,000 on a given day and the day before he was to deposit that money I phoned him and he said he was not going through with the deal.

Q. Did he say why? A. He said his bankers told him the war would probably go on for a few years and it would be a bad time to buy a company.

Q. This was when? A. Probably in February 1944.

Q. Of course the war was still on? A. Yes, sir.

Q. And that's the only explanation he gave you? A. That's the only explanation.

Q. And did you continue that discussion? A. Well, I went to Rutkin in the form of a complaint and told Rutkin as far as I was concerned I had completed a deal, I was the broker—

The Court: We don't want any conversation with Rutkin.

* * *

(848) Q. Did anything happen after you had that conversation with Rutkin? A. Yes. I am not permitted to talk about the conversation with Rutkin.

Q. Not with Rutkin, with Reinfeld. A. I went to Mr. Reinfeld the next day and told Mr. Reinfeld that I felt that I had earned $60,000 in the form of commissions, and he said he felt pretty badly about that and that he elected not to go through with the deal and I told him I wasn't going to sue him for the $60,000—

* * *

Q. $60,000, did that represent the commission that you were to earn? A. Yes, sir.

• • •

(849) Q. Now, when you went back to Reinfeld and told him about your loss of commission, did he say anything further about why he had not gone through with the deal? A. Other than the bankers advised him against making the deal.

Q. I take it, Mr. Pass he repeated that when you talked with him in the office, about what he had previously said on the telephone? A. Yes, I asked him further whether he would like to pay my out-of-pocket expenses.

• • •

Q. Can you fix the date? A. I would say February, 1944.

(850) Q. Now, did you subsequently receive from Reinfeld some money as compensation for your services and expenses? A. I did. I received a check for $2200.

• • •

Q. That fixes the date. Now, on what date did you receive a check from Mr. Reinfeld? A. I cannot give you the date. I know that my income return—

Q. Can you give us the year? A. Yes, '44. 1944.

The Court: What date was it that finally Reinfeld told you that there would be no deal?

The Witness: Sir, about February 1944.

• • •

(851) Q. Now, did Reinfeld in saying that he wasn't going through with the deal, say anything to you about Rutkin having threatened him? A. Oh, that couldn't be.

The Court: No, not couldn't be.

Q. Did he ever say it to you?

The Court: Just answer yes or no. Did he ever say it? We don't want your opinion.

The Witness: O. K., sir.

Q. Now, had you seen Rutkin with Reinfeld after the first introduction? A. Oh, yes, in the office about every fourth time I came there Mr. Rutkin was in that office.

Q. In Reinfeld's office? A. Not necessarily; in the offices of the Browne-Vintners Company.

Q. You also saw him. But did you also see him on some occasions in Reinfeld's office? A. Could have been.

Q. For six months—give us your best recollection—A. I would say yes.

Q. The discussion was going on with Rutkin about White Rock. A. Yes.

(852) *Cross examination by Mr. Tyne:*

Q. You are positive and definite to the testimony you have given here today, Mr. Pass; is that right. A. The best of my recollection.

Q. Well, how good is your recollection? A. Pretty fair.

• • • • •

Q. You say with certainty and definiteness that you fix the date that you received this check of Mr. Reinfeld's for your expenses or whatever it was in 1944, is that right? A. The best of my recollection is that it was February 1944; but I best recall it by making an income tax return.

Q. Is that how you are refreshing your recollection, from your income tax return? A. Yes, sir.

The Court: You don't have any independent recollection.

The Witness: I have.

The Court: Will you wait till I finish my question. You are a big business man but don't pull your big business stuff at this moment.

The Witness: I am sorry, sir.

Q. Now, do you have any independent recollection of the time (853) you had this discussion with Reinfeld in which finally you learned that the deal was not to go through, except by your income tax?

The Witness: That's the only recollection I have.

The Court: You were a big business man. This is a big deal. And the only recollection you have is from your income tax.

The Witness: Well, if I may say this, I have checked with the National Distillers the other day—that is last week—as to when they acquired the property of the White Rock Company. I recall that within the time that the White Rock deal was turned down by Mr. Reinfeld, within six months after that time the National Distillers Company bought the Company.

Q. When did they buy it? A. They took over the property September 1st, 1944.

Q. September 1, 1944? A. Yes, sir.

Q. Then the basis of your recollection of the day to which you have testified is on your income tax return for 1944 and this call that you made to the Distillers? A. Yes, sir, which was last week.

Q. Which was last week? A. Yes, sir.

Q. Other than that you have no independent recollection? (854) A. Other than I talked to a director of White Rock Company last night on the phone, asked him whether the year 1944 was clear to him. He said it was.

Q. I beg your pardon? A. He said the year 1944 was clear to him. It was when the National Distillers bought the White Rock Company.

* * *

Q. Did you make any records of the conferences that you held between Mr. Reinfeld and the representatives of White Rock and yourself? A. No, sir.

Q. None at all? A. None at all.

Q. And you are—what is your business now? A. I am a broker.

Q. Business broker? A. Yes.

Q. You buy and sell businesses? A. That's right, sir.

* * *

(855) Q. And you cannot produce one scrap of paper, do I understand you, in settling these negotiations? A. My income of '44.

Q. Outside of your income tax return you cannot produce one scrap of paper? A. No, sir.

The Court: Is that the way you check up on all of your business deals by your income tax?

The Witness: Yes, sir.

The Court: What did you do before you had to pay an income tax? Use your memory then?

The Witness: Well, that has been a long time since we haven't paid an income tax.

Q. Long time since you haven't paid an income tax? A. I say since—

The Court: He uses his income tax as a means of recalling his big, big business. All right, go ahead.

Q. Have you talked this case over with Rutkin before you took the stand or did you talk this case over with Rut-

kin before you took the stand? A. I talked with Mr. Rutkin's attorney and Mr. Rutkin.

Q. When? A. About two weeks ago.

Q. By telephone? (856) A. No, they called on me and served me with a subpoena.

Q. Did they personally serve you with a subpoena? A. Yes.

Q. Did you have a conversation with them at that time? A. No, just recalling what I am telling here right now.

Q. You couldn't be mistaken, could you? A. I don't think so.

Q. When did you start to negotiate with Mr. Reinfeld for the purchase of White Rock? A. I would say September, 1943.

Q. September, 1943? A. Yes, sir.

Q. You are sure of that? (857) A. Pretty sure, sir.

Q. Couldn't have been 1942? A. I am pretty sure it wasn't.

Q. Or the early part of 1943? A. I am pretty sure it was September, 1943.

Q. And what do you base that on, your income tax return, too? A. Yes, sir.

The Court: Your income tax return wouldn't show you when you started those negotiations.

The Witness: Well, sir, it would in this sense—

The Court: It would show that you received certain moneys during certain years.

The Witness: I knew the term of negotiations for the bringing of the White Rock directors, and the sale of that company to Mr. Reinfeld, that took about six months.

The Court: You have an independent recollection of that?

The Witness: That's right.

The Court: And that you didn't get from your income tax.

The Witness: That's right.

Q. And how long then, did you continue to carry on these negotiations? A. From September to February, 1944.

(858) Q. 1944? A. Yes, sir.

Q. And that would be a period of five months or thereabouts? A. That's right, five or six months.

Q. And you had meetings from time to time? A. Every week. That is, I went to the offices of Browne Vintners most every week.

Q. Well, you made telephone calls, did you not? A. Oh, yes.

Q. You went from one to the other, submitted proposals and counter-proposals. A. Yes, sir.

Q. And you have no record at all of those proposals? A. That's right, sir.

Q. And you have searched for them, haven't you? A. I don't keep records.

Q. Oh, you don't keep records. A. No.

Q. How do you prepare your income tax returns? A. I prepare my income tax returns through memorandums I made but I don't keep any record of my conferences.

Q. Or any customers that you have? A. No, sir.

Q. Or any prospective purchasers? A. No, sir.

(859) Q. Any offers for businesses that you get from time to time? A. No, sir.

The Court: Do you have any office?

The Witness: Yes, sir.

The Court: Do you have a stenographer?

The Witness: No, sir.

The Court: Do you write your letters in longhand?

The Witness: Oh, occasionally I have a public stenographer come in. I only write a letter about once a month.

Q. So that none of your business is a matter of record, isn't that so? A. That's it exactly other than my income and I report that on my income tax.

Q. Are you familiar with the part of the Internal Revenue Law that requires you to keep records? A. No, sir, I am not.

Q. Do you make up your own income tax return? A. No, sir, I go to an attorney.

Q. An attorney? A. Yes, sir.

Q. And he prepares the income tax return on what you tell him? A. Yes, sir.

(860) Q. Verbally? A. Well, I have proof of my income.

Q. Written proof? A. It makes it pretty easy. In 1944—I have a copy of my 1944 return in my pocket.

Q. The copy of the one which you filed with the Internal Revenue? A. Yes, sir.

Q. What other paper do you have? A. That's all I have.

The Court: Don't have any working papers?

The Witness: Yes, the working papers I have.

Q. That is the accountant's working papers? A. All in my handwriting.

(861) LOUIS I. POKRASS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Pokrass, where do you live? A. 115 Central Park West, New York City.

Q. And what is your business? A. Manuafacturer of television.

Q. And at one time were you in the liquor business? A. Yes.

Q. Did you own stock in Browne Vintners? A. I did.

(862) Q. And were you a partner with someone in the ownership of that stock? A. My wife.

Q. Were you associated with Harry Davis? A. I was.

Q. In the ownership of Browne Vintner stock? A. I was.

Q. And were you also associated in the liquor business with Harry Davis? A. I was.

Q. What kind of liquor business were you in? A. Wholesale liquor business.

Q. Did you do business with Browne Vintners? A. I did.

Q. Did you buy or sell with Browne Vintners? A. I bought.

Q. You were buying? A. Yes.

Q. Did you buy large amounts? A. I did.

Q. Now, during what period of time did you do business with Browne Vintners, what years? A. From the beginning of repeal in 1933 until 1946.

Q. And do you know Mr. Rutkin? A. I met Mr. Rutkin, yes.

(863) Q. And how long have you know him? A. I met him the first time in about '37.

Q. Where did you meet him, do you recall? A. At the Browne Vintners' office.

Q. Do you know Mr. Reinfeld? A. I do.

Q. And how long have you known Mr. Reinfeld? A. Oh, since about the latter part of 1934.

Q. And you knew him in connection with Browne Vintners, did you? A. Yes.

Q. Now, did you visit Browne Vintners office frequently? A. Yes.

Q. And you know where their offices were in New York City? A. Yes.

Q. Did you see Mr. Rutkin there? A. I did.

Q. Did you see him there often? A. Yes.

Q. And what did you see him doing there? A. Oh, he used to be in the office, in the sales office, like I would see him going in and out of Mr. Reinfeld's office, all over it, he was all over the place.

(864) Q. During what years, about? A. I would say 1937, '38.

(864A) Q. 1937 and '38. Now, were you ever there when Mr. Rutkin came in and wanted to see Mr. Reinfeld? A. Well, I used to come up to Brown Vintners' offices, sometimes two or three times a week, and I used to see him in the office. I seen him talking in the office there.

Q. Have you ever been waiting to see Mr. Reinfeld when Rutkin came in? A. Yes.

Q. And what happened to Rutkin when he came in? A. Well, he used to walk right in.

Q. To Reinfeld's office? A. Yes.

Q. And you waited? A. I had to be announced, I had to see his secretary and had to be announced.

Q. Now, did you talk with Rutkin in Brown Vintners' office about Browne Vintners' business? A. They had a bar in the office and I used to see him around the bar sometimes talking to Mr. Reinfeld, and I had occasion to talk to him several times.

Q. Talk to Rutkin? A. Yes.

Q. Now, did you ever talk to Rutkin and Reinfeld, together, at the Browne Vintners' bar about Browne Vintners' business? (865) A. I overheard conversations between Reinfeld and Rutkin standing alongside and discussing the Chicago promotion of Wilson and White Horse Scotch.

. . . . .

Q. Can you tell us about what time of the year it was when you heard this conversation? A. In the latter part of 1937 or the early part of 1938.

Q. All right, sir. Now, then, will you tell us, please, what the conversation was between Reinfeld and Rutkin. A. I overheard a conversation between Reinfeld and Rutkin saying to him—

Q. Wait a minute, just a minute. Take it easy. "Saying to him," who said to who? A. Rutkin was telling Mr. Reinfeld that he made a deal with the Bartenders' Union.

Q. With who? A. The Bartenders' Union in Chicago to help along the Wilson Whiskey in Chicago. He said that was a good deal, or something like that. I don't remember exactly, but I do remember what the conversation was.

(866) Q. I see. Now, do you remember hearing a conversation between Rutkin and Reinfeld with reference to Rutkin doing promotional work in any other city besides Chicago? A. In Boston.

Q. In Boston? A. Yes.

Q. And was that conversation on the same day or a different day? A. No, I saw him there about a half a dozen times, in the bar. I used to see him downstairs in a restaurant in the Press Building, there was a restaurant downstairs; I also saw him at Toot Shor's Restaurant across the street.

Q. When you say you saw them, do you mean Rutkin and Reinfeld? A. Yes.

Q. Together? A. Together.

(867) Q. When you saw them, do you mean Rutkin and Reinfeld? A. Together.

Q. Together? A. Yes.

Q. And did you hear any conversation that took place between them? A. No, not at the Shor place because I didn't sit at the same table, but I heard the conversation at the bar and at the office, too.

Cross examination by Mr. Tyne:

Q. And where do you reside? I didn't get it. A. 115 Central Park West.

Q. How long have you lived there? A. Eight or nine years.

Q. And you are in what business, did you say? A. I am in the manufacture of television sets.

Q. How long have you been in that business? A. Two and a half years.

Q. You went into it the middle of 1947 or thereabouts? A. That's right.

(868) Q. You are associated with Joe Davis? A. Yes, sir.

Q. Where? A. In Capital Wines & Liquors, not Joe Davis, Harry Davis.

Q. How long were you in that business? A. 1943 to 1946.

Q. Did you devote all your time to that? A. Most of my time.

Q. Were you engaged in any other business during that time? A. Most of my time.

Q. Were you engaged in any other business? A. No.

Q. You had no other business? A. No.

Q. Had no other associates in business? A. Charlie Cook I was in partnership, there were three partners, myself, Mr. Harry Davis and Charles C. Cook, no other partner.

Q. You weren't engaged in any other business during that time? A. No, sir.

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Q. Did you have any other associates other than those that you have mentioned?

(869) Mr. Van Riper: Now, just a minute, if your Honor please. I have no objection to the question if it is made clear; associates where and what?

Mr. Tyne: In any business he was in.

The Court: Well, he says he was only in one business.

The Witness: Capital Wines & Liquors.

The Court: And there were only three people in that. That is the fact?

The Witness: That's right.

Q. Were you engaged in any business in Nevada? A. No, not in '46.

The Court: Not in '46?

The Witness: I was in the liquor business from '43 to '46.

The Court: When were you engaged in business in Nevada?

The Witness: In '43.

(870)

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The Court: He has testified he was in the liquor business from—

The Witness: 1933 to '46.

The Court: And then you sold out and got in business?

The Witness: That's right.

Q. You testified you were not in any other business.

The Court: What difference does this make? That came after he sold—was that after you sold out?

The Witness: After I sold.

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The Court: Look, what business were you in in the west?

(871) The Witness: I was in the hotel business.

The Court: Then you got in the television business?

The Witness: Yes.

Q. What was the name of the hotel? A. Flamingo.

Q. Flamingo?

The Court: Where? In Los Vegas?

The Witness: Yes.

Q. It was a hotel that you had? A. Yes.

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Q. You say that you were in Browne Vintners in the fall or (872) winter of '37 and the early part of '38? A. Yes.

Q. Is that the only time you were there? A. I was there many times.

Q. How many times? A. Many times.

Q. What do you mean by many? A. Well, I was there, I used to visit the office almost twice a week from 1933 until 1946, sometimes three times a week.

Q. You purchased products from Browne Vintners, didn't you? A. I did.

Q. You were a stockholder in Browne Vintners? A. I was.

Q. Who brought you into Browne Vintners? A. Harry Davis.

Q. That was on the occasion of one of the recapitalizations, wasn't it? A. I don't know what it was; he told me there was an opportunity of buying some stock and I bought it.

Q. That was Harry Davis? A. Harry Davis.

Q. And you put a substantial amount of money in Browne Vintners? A. I did.

(873) Q. How much? A. I don't recall, about fifty or sixty thousand dollars; I don't recall the amount.

Q. You say you were there once or twice a week? A. Yes.

Q. Were you there in 1936? A. Yes.

Q. The winter of 1936? A. Yes.

Q. And the early part of 1937? A. Yes.

Q. Did you see Rutkin there during that time?

A. I saw him there in '37 or '38.

Q. How about '36? A. I don't remember.

Q. When in 1937 did you see him there? A. I don't recall.

The Court: Now you recalled his conversations very clearly.

The Witness: The latter part of '37.

The Court: The latter part of '37 you saw him there and in '38. Now, what other years did you see him?

The Witness: Those are the three years I saw him.

(874) Q. Let me understand you. You saw him in the latter part of 1937 and the early part of 1938? A. Yes.

Q. Now, during that period—what would that be, about six months? A. Maybe a year.

Q. A year? Now, how many times would you see him there during that period of time? A. Maybe about fifteen or twenty times.

Q. Fifteen or twenty times during that period of a year? A. Yes.

Q. And you saw him in the office there and at the bar? A. I did.

Q. This bar was for the customers? A. Yes.

Q. Of Browne Vintners? A. Yes.

Q. And you were a customer? A. I was a customer.

Q. Yes. And did you see him most of the time at the bar? A. Not always at the bar.

Q. About how many times did you see him at the bar? A. Well, it was hard to tell. It is some years back. Three times, probably three or four times.

Q. Three or four times? But where did you see him the (875) rest of the time that you mentioned? A. I saw him walking in Mr. Reinfeld's office, oh, probably eight or ten times. I saw him having lunch with Mr. Reinfeld in the building downstairs.

Q. Did you ever have lunch with him? A. Not together with Mr. Reinfeld and Rutkin together.

Q. And you overheard this conversation between Mr. Rutkin and Mr. Reinfeld? A. Yes.

Q. You weren't participating in the conversation, were you? A. As a matter of fact Mr. Reinfeld talked about it to me later.

Q. You weren't participating in the conversation, were you? A. No, no, I didn't, but they were standing alongside of me; it was a small bar. You could hear them talk, you know. They weren't trying to hide it from me; they were just talking business.

Q. Yes. And in this conversation Rutkin told you, or rather you heard Rutkin say to Reinfeld that he had arranged with a bartenders' Union in Chicago? A. Yes, to endorse the sale, to push the Wilson and White Horse Whiskey.

Q. For the Bartenders' Union to push the sale of— A. Of White Horse and Wilson Whiskey.

Q. What else was said, if anything? (876) A. Oh, Reinfeld thought it was a good idea; and there was some talk about key spots there, key prestige places. Rutkin said "Just give me time and I'll get it in there, I'll get it in the places for prestige purposes".

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Q. And that was all that was said, is that so? Strike it out. That's all you overheard? A. Yes.

Q. And that's the only conversation you overheard, isn't that so? A. That's all I can remember now.

Q. That's all you can remember now? A. One conversation.

(877) Q. Isn't it a fact that during that period of time Rutkin was down in Florida? A. I don't know anything about that.

Q. You don't know anything about that? A. No.

Q. Don't you know he was down in Florida, operating the Dempsey-Vanderbilt Hotel? A. I don't know anything about Rutkin's Florida business.

Q. You don't know anything about that at all? A. No.

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Q. All right. You had two conversations. Where did the other take place? A. At the bar.

Q. At the bar too A. Yes.

The Court: The same bar?

The Witness: It was either at the bar or the office; I don't recall where it was. But there was two conversations.

(878) Q. You don't know whether it was at the bar or in the office? A. I don't remember. One I remember distinctly—

Q. You think it might have been at the bar? A. It might have been at the bar.

Q. And what do you say that conversation was? A. They were discussing the Boston market and—

Q. Discussing the Boston market? A. Yes.

Q. Yes? A. And Reinfeld said at that time to Ruthin that he may abandon the Chicago market and concentrate only on New York and New Jersey.

Q. You overheard him say that? A. Yes.

Q. You remember that specifically? A. Yes.

Q. And that's all that was said? A. That's all I can remember now.

Q. That's all you can remember? A. Yes.

Q. Well, how long did you stand there? A. Oh, maybe fifteen, twenty minutes.

Q. And you can't remember anything else but that? A. That's all I can remember now.

(879) Q. And you have exhausted your recollection, you have searched your recollection. A. That's all I can remember now.

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Q. Did you make a written record of that conversation? A. No, sir.

Q. Did you think at some future time you would be called upon to testify to that? A. What is that?

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Q. Now, you saw many other people at the bar and in the office on the occasions of these conversations related to? A. I did.

Q. About how many people would you say were there the first time? A. Oh, some times there was nobody at the bar and sometimes there was five or six people at the bar. I can't recall.

Q. And I am talking about these two particular conversations, how many people were at the bar on the occasion of this first (880) conversation? A. I don't recall.

* * *

Q. Do you remember who else was at the bar at all, of these five or six people? A. That is twelve years back.

Q. I am testing your recollection. A. Yes.

Q. You have related certain things, now I want to find out what else you remember that transpired at that bar on the first occasion. Who else was there? A. I don't recall who was at the bar at the time.

Q. What else did you say on that occasion other than what you have already related heard said? A. What I said?

Q. Yes. A. I told you, I heard the conversation between Reinfeld and Rutkin.

Q. Yes. You didn't participate in that conversation? A. No.

Q. Now, did you talk to anybody else there that day? A. To Mr. Reinfeld.

Q. Did you talk to anybody else other than Mr. Reinfeld? A. I may have said something to my partners.

(881) Q. Your partners? A. I may have said something to my partners.

Q. Were your partners there, too? A. I don't recall.

Q. Well, now, you may have said something to your partners, but now you say you don't recall who was there.

A. I don't recall whether they were there. I may have said something, I don't remember.

The Court: Did you hear any other conversations except the conversation between Rutkin and Reinfeld?

The Witness: Oh, many times you talk—

The Court: Anything you remember?

The Witness: They talk about baseball—

The Court: I mean other people besides Reinfeld and Rutkin.

The Witness: I don't recall.

The Court: You don't recall any conversations except those between Reinfeld and Rutkin?

The Witness: Yes.

By Mr. Tyne:

Q. And is that true of the second occasions when you overheard this conversation about Boston? A. I don't recall anybody being there.

Q. You don't recall anybody being there. And you don't recall whether it was in the office or at the bar?

(882) A. I don't know, no.

* * *

Q. Who else was present when you heard this conversation relating to the Boston business? A. I don't recall.

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Q. Do you recall anything else that happened that time? A. I don't recall.

Q. You don't recall anything. A. No.

Q. Do you recall anything else that you did on that day? A. I always came in to transact my business with Browne Vintners.

Q. My question is, do you recall anything else that you did on that day? A. I came in to buy some whiskey there.

Q. Anything else? A. That's all.

Q. That's all? A. And I was interested in the Browne Vintners, I was a stockholder.

Q. You were a stockholder? A. Naturally I was concerned what was said about the (883) Chicago market, I was a stockholder.

Q. You don't recall anything else that was said or done that day except what was already testified to? A. It didn't interest me.

Q. Didn't interest you? A. No.

Q. Although you were interested in Browne Vintners? A. Yes, I had an interest there and I was interested.

Q. Yes.

* * *

JOSEPH NEWMAN, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Newman, where do you live, please? A. 160 Central Park South, New York City.

Q. And what is your business, sir? A. I am connected with the Browne Vintners Company, Incorporated.

Q. And how long have you been connected with Browne Vintners? (884) A. Seventeen years.

Q. What is your capacity there now? A. Assistant secretary.

Q. And were you at one time president of Browne Vintners? A. I was.

Q. And during what years were you president of Browne Vintners? A. Well, I don't exactly remember.

I think probably it was around 1936 or '7; I am not sure of that.

Q. And for how long were you president of Browne Vintners? A. Maybe a couple of years.

Q. And who was the directing head of the company at that time? A. Mr. Reinfeld.

Q. Joe Reinfeld A. Yes, sir.

Q. Did you own any stock in Browne Vintners? A. There was stock in my name but I did not own it.

Q. Do you know how much stock was in your name? A. No, I couldn't exactly tell you that.

Q. Do you think it might have been in the neighborhood of 75 shares? A. Well, I know that when it was sold it amounted to over $200,000; I don't know, I never saw the stock.

Q. All right. You don't know in shares, but you know (885) it amounted in dollars, approximately, to over 200,000? A. Righto.

Q. You mean in 1940 when the company was sold to Seagrams? A. That's correct.

Q. Now, then, did the proceeds of that stock, which was in your name, over $200,000, come to you? A. It did, yes.

Q. The money came to you? A. Yes, sir.

Q. Did you pay the tax on it? A. Yes, sir.

Q. What did you do with the money? A. Well, it was deposited in the bank in my name and eventually I returned it to Mr. Reinfeld and to Mr. Levin.

Q. And how did you give it to Mr. Reinfeld and to Mr. Levin, by check or in cash? A. In cash.

Q. All of it? A. (Continuing.) At different times.

Q. Yes, but you gave him the entire amount? A. Yes, sir.

The Court: Let me ask you, you permitted your name to be used?

The Witness: Yes, sir, I did.

(886) The Court: Did you know for whom?

The Witness: Why naturally I knew it was for Mr. Reinfeld.

The Court: Anybody else?

The Witness: Not that I know of.

The Court: Did you know why?

The Witness: Well, he come to me and said, "Joe, I am buying so and so many shares of stock and I am putting them in your name". I didn't think there was anything wrong in it.

The Court: You didn't?

The Witness: No, sir.

The Court: When was that?

The Witness: Oh, I don't know, I guess it was some time—I really couldn't tell you honestly.

The Court: Well, was it when Browne Vintners was originally formed?

The Witness: No, it was later.

The Court: Later than that?

The Witness: Yes.

The Court: Did you know whether there were any other people fronting for people or not?

The Witness: No, I don't think I do.

The Court: All right.

(887) *Cross examination by Mr. Tyre:*

Q. Mr. Newman, you said you were president of Browne Vintners for several years? A. No, just for a couple of years.

Q. A couple of years. Now, when this stock was purchased in your name, was that on the occasion of the recapitalization? A. I really don't remember when it was.

Q. Well, did you, yourself, have any opportunity to buy any stock in the corporation? A. I suppose I could have if I wanted to, yes.

Q. Well, it was there if you wanted to buy it, isn't that so? A. That's the idea.

Q. Yes. And was anybody, to your knowledge, ever prohibited from purchasing any stock in Browne Vintners? A. I wouldn't know.

The Court: Well, as president what were your duties?

The Witness: Well, I presided at the meetings, that's about all.

The Court: You were a figurehead there, were you?

The Witness: Mostly.

Q. You signed checks, did you not? A. I don't think so; I don't remember.

(888) Q. You were in the office every day, were you not? A. Every single day.

Q. Every day, yes.

The Court: A busy man doing nothing.

The Witness: What is that, sir?

The Court: I say you were a busy man doing nothing.

The Witness: Oh, no, I had a lot to do.

The Court: If you were a figurehead?

The Witness: Oh, no, I did a lot of work, I had charge of the Scotch whiskey and other items.

The Court: You weren't just a figurehead?

The Witness: No.

The Court: Don't depreciate your ability.

The Witness: That's right. Thank you.

Q. What were your duties, Mr. Newman, will you tell us, please? A. Why, I did some traveling, I attended different conventions, I had charge of some of the customers; also had charge of the Scotch whiskey.

Q. Did you sit in on directors' meetings or stockholders' meetings? A. I was at some of the meetings, yes.

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(889) Q. You said that you purchased this stock at the request of Mr. Reinfeld? A. I didn't purchase it, Mr. Reinfeld purchased it and said he was putting it in my name.

Q. Putting it in your name. Can you give us the date on which it was purchased? A. I haven't the slightest idea.

Q. Yes. But you know it was returned? A. What do you mean?

Q. It was all returned, that is, the proceeds of the stock was returned? A. To Mr. Reinfeld.

(890) Q. Yes.

Mr. Van Riper: Wait a minute now, if your Honor please. I think the question ought to encompass as to whom it was returned.

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The Witness: I returned it to Mr. Reinfeld and to Mr. Levin, which I said before.

Q. They are the persons for whom you were holding the stock? A. I was holding it for Mr. Reinfeld.

Q. And for others, is that right? A. Not that I know of.

Q. Well, I mean you say not that you know of, do you know anybody else that you were holding it for? A. No.

Q. Did you purchase some stock, yourself, at that time? A. No, sir.

Q. But you did say the opportunity was there to do so if you wanted to do so? A. Yes, sir, it was there, I could have bought.

Q. And you say you are still with Browne Vintners today, is that right? A. Yes, sir.

(891) Q. It is now being operated by Seagrams? A. That's correct.

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Redirect examination by Mr. Van Riper:

Q. You talked about your duties; who prescribed your duties while you were president?

Mr. Tyne: Of course I object to that, "who prescribed your duties".

A. I don't know, the work was there and I took care of it, as I say.

Q. What was your salary? A. Oh, I think my salary at that time was around $12,000.

Q. Now, then, you said you gave this money back to Reinfeld and Levin? A. Yes, sir.

Q. And you gave it back in cash? A. Yes, sir.

Q. You got it in a check, you received a check? A. I didn't receive it, the check was taken by Mr. Cohen and he asked me for my bank book and he took my bank book and went to the bank and deposited it, himself.

Q. By Mr. Cohen you mean Mr. Sam Cohen, the accountant? (892) A. That is correct.

Q. (Continuing.) We have been talking about? Then you drew it out in checks to the order of cash? A. That is correct.

Q. Now, why didn't you give Reinfeld and Levin a check? A. Well, they requested—they said they didn't

want it that way, and I gave it to them at different times, maybe over a period of six months.

Q. They requested it in cash? A. Yes, sir.

. . . .

Mr. Tyne: However they requested it, you returned it to them?

The Wtiness: That's right.

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(893) MAURICE HAUPT, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Van Riper:

Mr. Van Riper: Perhaps it will help if I come up here, I don't know; I will try it out. I have never spoken to him.

Q. Mr. Haupt, where do you live, sir? A. 359 East 50th, New York.

. . . .

Q. East 50th Street, New York. And what is your business, sir? A. I am with Browne Vintners Company, special representative.

Q. How long have you been with Browne Vintners? A. Eleven years—or ten years.

Q. Ten years. And do you know Mr. Reinfeld, Joe Reinfeld? A. I know him very well.

Q. Had you known Mr. Rutkin, James Rutkin? A. Yes.

Q. Now, were you with Browne Vintners when Mr. Reinfeld was there? A. Yes.

Q. And you were with Browne Vintners, I understand, before it was sold to Seagrams, is that right? A. Yes.

(894) Q. Now, in those days when Reinfeld was running Browne Vintners and before it was sold to Seagrams, what did you do with Browne Vintners? A. Well, I was the foreman in Canada and I was export sales manager for the Canadian Industrial Alcohol Company and the Consolidated Distillers.

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Q. Now will you repeat that again? You just told us something about Canada. Will you repeat it to us, what you did? A. I lived in Canada and I was export sales manager for the Canadian Industrial Alcohol Company and the Consolidated Distillers, and in 1935 I sold three-quarters of a million gallons to Browne Vintners Company—that is, Mr. Reinfeld—for blending purposes.

Q. You say you sold it for him or to him? (895) A. Seven—eight, sir; eight years old.

Q. That's good whiskey, but did you sell to Browne Vintners or for Browne Vintners? A. To Browne Vintners.

Q. You sold it to Browne Vintners. All right. Now, were you in the Browne Vintners' offices in those days? Did you go to the Browne Vintners' office? A. Yes.

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Q. Did you go to the Browne Vintners' office in New York, Mr. Haupt? A. Yes, I used to come up often on trade acceptances, every month.

Q. Well, you had business there. A. Yes.

Q. And when you went to the Browne Vintners' offices, did you see Mr. Reinfeld? A. Yes.

Q. And did you see Rutkin there? A. Well, once in a while I saw him, not all the time.

(896) Q. And when you saw Rutkin there, where was Rutkin? A. Well, he was going from one office to another. That's all I saw him, you know.

Q. Going from one office to another? A. Yes.

Q. In the Browne Vintners' offices A. Yes.

Q. And did you have any discussion with Rutkin? A. No.

Q. Concerning the business? A. No, no.

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FELIX ARNOULD, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Arnould, where do you live, sir? A. 322 Livingston Avenue, New Brunswick, New Jersey.

Q. And what is your business? A. I have a bar and grill at 204 French Street, New Brunswick.

Q. Do you know the defendant here, Rutkin? (887) A. I do.

Q. How long have you known him? A. Oh, I would say 30 years.

Q. Do you know Joe Reinfeld? A. I do.

Q. How long have you known him? A. Well, I've known him since back in '27 or '28.

Q. Now, were you a member of the combine with Rutkin and Reinfeld during Prohibition? A. I was.

Q. And were you a member of that in your own name, alone, or with someone? A. Pardon me?

Q. Were you a member of that combine—did you have a percentage in it? A. Yes.

Q. Did you have that percentage alone or with someone else? A. Why, there was White, Coste, and myself.

Q. And whose name was the percentage in? A. Coste.

Q. And what was Coste's first name? A. Edward.

Q. Now, when did you join with the combine, do you know? (898) A. You mean in the rum running days?

Q. That's right. A. I would say back in '27 or '28.

Q. And did you put any money in? A. I wouldn't have to.

Q. Did your partners put any money in? A. No.

Q. Now, at that time did you talk with Rutkin? A. Rutkin, no.

Q. Did you talk with Reinfeld? A. Reinfeld, yes.

Q. Was that before Rutkin came in? A. Yes, that is before Rutkin came in.

Q. That was before Rutkin came in. Now, do you remember when Rutkin came into the combine—I don't mean to ask about the year but do you remember the occasion when he came in? A. Yes, I do.

Q. Now, then, did you remember Rutkin working in the combine's business after he came in? A. I saw him at the dock.

Q. Whereabouts did you see him at the dock? A. Shark River, South Amboy, Sayreville.

Q. And what would he be doing there? A. Well, helping us with the trucks being loaded.

Q. You mean by that loaded with liquor? (899) A. That's right.

Q. What would you be doing there? A. I would be there helping.

Q. You would be helping Rutkin? A. That's right.

Q. Did you ever see Rutkin come in yourself in connection with the loading of the liquor on the truck? A. He would give orders and tell them where to go to.

Q. Did you ever see Reinfeld on the dock? A. He done the same thing.

Q. When you say he done the same thing, what do you mean he did? What did he do? A. He was down there to see where the trucks were sent, tell them where to go.

Q. Did you hear Reinfeld do that and see him do it? A. Why, he was right there to tell us where to go.

Q. Did you know Captain Bailey? A. I have only saw him about twice down at Shark River.

Q. You did see him about twice? A. Yes, that's all.

Q. Did you know who he was? A. Yes.

Q. What was his position? A. All I know he was a captain.

Q. Captain of what? (900) A. Of the Coast Guard.

Q. And where did you see him when you saw him at Shark River? A. Right at the dock.

Q. And what was he doing? A. Well, he was just standing around looking to see what was going on.

Q. Who of your group was around there at the time? A. Well, there would be Bill White, Coste and myself.

Q. Who else, Reinfeld? A. Reinfeld, Rutkin, the whole bunch down there.

Q. Did Captain Bailey ever interfere with your activities? A. No, he just come down, looked around and seen what was coming in.

Q. You mean to find out what kind of liquor it was that was coming in?

The Court: How much and what cut.

A. How many cases were coming in.

Q. How would he find out how many cases? A. He would guess how many he had in the truck, I guess.

Q. Now, then, how long did you stay in the combine? A. I stayed in the combine till it busted up, broke up.

Q. Well, would you say—you mean by that when prohibition went out? A. When prohibition came in, then it went into Browne Vintners.

(901) Q. You mean when prohibition came in or when it went out? A. When it went out, then it went into Browne Vintners.

Q. Now, when prohibition went out, did you and your crowd still have an interest in the combine? A. Absolutely.

Q. Do you know what percentage of interest that was? A. That I don't know.

Q. And what happened to your interest in the combine when prohibition went out? A. I don't know what happened to it, but I know it is in Browne Vintners.

The Court: How do you know that?

The Witness: Well, Mr. Reinfeld said my shares were in that.

Q. Joe Reinfeld told you that? A. That's right.

Q. And did you have a talk with Reinfeld before Browne Vintners was formed or afterwards, do you know? A. No, this was afterwards.

Q. After it was formed? A. After it was formed.

Q. And how did Reinfeld come to tell you your shares were in Browne Vintners; did you make some inquiry of Reinfeld? A. No. All I know is that the balance of the money that I had coming, that is, the share we had, went into Browne (902) Vintners and we were supposed to get stock for it which we never got.

Q. Did you know at that time how much money you had coming? A. As far as I know, it was supposed to be $2,300 apiece. That's what he told me.

Q. The three of you? A. No. $2,300 apiece.

Q. $6,900? A. That's White, Coste and myself.

Q. Did Reinfeld tell you you had that much money in the combine? A. In the company.

Q. And then did he tell you that that went into Browne Vintners? A. That's right.

Q. Now, did you ever talk with Reinfeld about the shares in Browne Vintners? A. I did, but I never got them.

* * *

Q. Well, can you tell us about what year it was that you talked with Reinfeld about your stock in Browne Vintners? A. Well, I wouldn't know really, but I would say—I don't want to say with him for sure—all I know is that I (903) went down to Browne Vintners.

Q. Never mind. Maybe I can help you a little bit. Do you remember about the time that Browne Vintners started in business—I don't mean the date—do you remember the time when they started in business? A. When they started in?

Q. Yes. A. I am not sure of that.

Q. Well, I am not asking you for the date. Do you remember when the event took place when that happened, when Browne Vintners opened up the business? A. Well, all I can answer, all I know is it opened up; the year I cannot say because I am not sure.

Q. You know that they opened up. Now, then, did you talk with Reinfeld about your share of stock after that? A. Absolutely.

Q. Can you tell us about how long after they opened you talked to him? A. The only time I can recollect is when I went in there; after Ed Coste had passed away I went in to try to get what was coming to him for his children. That was eight or nine years ago.

Mr. Tyner: I object to this line of testimony; it is certainly immaterial to the issues.

The Court: Well, he is trying to prove a date; he (904) is certainly pretty long winded and immaterial in doing it. Do you know when it was, or don't you?

The Witness: I cannot recollect.

The Court: How long after prohibition went out?

The Witness: Well, I would say about ten years.

The Court: That would make it '43.

The Witness: No, it is more than ten; I would say it is about fourteen or fifteen years ago.

The Court: Oh, fourteen or fifteen years ago. I said how long after prohibition went out.

The Witness: After prohibition went out?

The Court: Yes, how long after prohibition went out did you go to Browne Vintners?

The Witness: Right after, when Browne Vintners opened up. When they started, we were in there, we were in Browne Vintners when it first started.

The Court: No; when did you have this conversation with Reinfeld?

The Witness: This was after—

The Court: How long after?

The Witness: Well, probably it was a year.

Q. All right. Fine. Now you fix it as about three years after Browne Vintners opened you went to see Reinfeld; what did he say about your stock? A. He is supposed to give us our stock.

(905) Q. Well, don't tell us what he is supposed to do unless he said it. What did Reinfeld say about your stock? A. He is supposed to give me my stock.

Q. Did Reinfeld say he would give you your stock?

Mr. Tyne: That is objectionable. Counsel asked did he say this and put the words right in his mouth.

Q. Can you tell us what Reinfeld said. You say he was supposed to give you the stock. What did he say? A. "When I have a chance," he said, "Some day I will give you your stock."

Q. Now, did you ever see Reinfeld about your stock after that? A. I saw him a couple of times after that.

Q. Did you get your stock? A. No.

Q. Did you find out subsequently that the Browne Vintners Company had been sold? A. I did.

Q. And did you talk with Reinfeld about the sale of the Browne Vintners Company? A. Not about the sale—I had nothing to do with that.

Q. I mean about the stock. A. All I knew it was sold and I was looking for my end and never got it.

Q. After you found the Browne Vintners was sold, did you (906) talk to Reinfeld about getting your end, as you call it? A. That's right.

Q. And what did Reinfeld tell you?

* * *

A. He told me as far as he knew, I would be lucky if I got what I invested in Browne Vintners.

The Court: When did he tell you that?

The Witness: Oh, that's about six or seven years ago.

The Court: About 1943 or '44?

The Witness: That's about the time.

Q. And you never got anything from him? A. Never got anything.

* * *

Q. Did you talk with him about Coste's stock? A. Yes.

Q. When did you talk to him about Coste's stock? A. About the same time I was there about my own.

Q. Did you ever get any money from Reinfeld for Coste's stock? A. No, I did not.

(907) Q. Now, why did you ask Reinfeld about Coste's stock? Why didn't Coste do that? A. The reason I asked about Coste's stock was because he had died and I wanted to take care of it for his children.

Q. And you got no money? A. I got no money.

Felix Arnould—for Defendant—Cross

Cross examination by Mr. Tyne:

Q. Did I understand you to say, Mr. Arnould, that you didn't put any money in the bootlegging combine? A. No, I didn't.

Q. You did not? A. No.

The Court: Well, what were you to get stock for?

The Witness: That's what he was talking about.

The Court: No; in the bootlegging combine.

A. We were amongst ourselves at the start.

The Court: No, but why should you get any stock in the bootlegging concern if you didn't put any money in?

The Witness: We didn't have to; we had boats that we put in and we run them by ourselves.

The Court: You were running by yourselves?

The Witness: By ourselves, White, Coste and myself.

The Court: I am talking now about this combine with Reinfeld.

(908) The Witness: That's about Browne Vintners.

The Court: No, no, no. Did you have any shares of—

The Witness: Here—

The Court: Now, wait a minute. Did you have any shares in the bootlegging combine of Reinfeld?

The Witness: I did.

The Court: The bootlegging?

The Witness: The bootlegging; I was interested in that.

The Court: Did you put any money in that?

The Witness: No, I didn't.

The Court: Why would you get shares in that if you didn't put in any money?

The Witness: That is what I am trying to explain. We were running down in South River and they came in there.

The Court: They came in with you?

The Witness: As partners.

The Court: Well, what did they do?

The Witness: They had whiskey which they brought in and they throwed us in with them, made us all partners together.

The Court: Were you partners in the whiskey when it was out on Rum Row?

The Witness: Yes, and partners when they brought it in.

(909) The Court: No, no, before they brought it in.

The Witness: Absolutely.

The Court: Were you partners in that?

The Witness: Yes.

The Court: Were you partners up to Miquelon?

The Witness: That's right.

The Court: What I want to know is what you put into that combine which would make you a partner.

The Witness: Only what I said, we were running whiskey ourselves.

The Court: You were running whiskey yourselves?

The Witness: Yes, and they came down as partners.

The Court: Where did you get the whiskey you ran yourself?

The Witness: They had the whiskey.

The Court: You were running their whiskey?

The Witness: That's right.

The Court: Did you buy it

The Witness: We bought it.

The Court: You bought it from them?

The Witness: Well, we bought it, yes, but that made us all partners, though.

The Court: Oh, you bought it—that doesn't make you a partner. You bought the whiskey from Reinfeld and Rutkin.

(910) The Witness: We bought off-shore whiskey; then eventually we got partners together.

The Court: Well, how did you become partners? Did you put money in the—

The Witness: Didn't have to put it in.

The Court: Well, what did you do to become a partner?

The Witness: What did I do?

The Court: Yes.

The Witness: Brought in whiskey.

The Court: Brought in whiskey that you paid for.

The Witness: We didn't pay for it; they gave it to us.

The Court: You didn't pay for it?

The Witness: They gave it to us on trucks and we all wound up being partners together.

The Court: What share did you have in this combine?

The Witness: I had 4 percent at that time, in fact it was supposed to be 12 percent between the three of us.

The Court: Twelve percent of that regular combine?

The Witness: That's right.

The Court: Was Rutkin in?

The Witness: Not that I know of.

The Court: You were in it right to the end, weren't you?

(911) The Witness: Right to the end.

The Court: Was Zwillman in it?

The Witness: He was not.

The Court: Do you know whether he put in any money?

The Witness: That I don't know.

Q. Did you get out when Zwillman and Stacher came in? A. No, I did not.

Q. You continued on? A. I continued on.

Q. From 1926 or '27, did you, or up until— A. I believe it was around '27 or '28, as far as I can remember.

Q. '27 or '28? Right up until the repeal, right up until the time of repeal? A. That's right.

Q. How much did you get out of the combine during that period of time? A. That I don't know.

Q. Well, how much did you get out of it in any one year from 1927 to 1933? A. That I cannot answer.

(912) Q. Can you tell us how much you got out each month? A. No, I don't know.

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Q. Can you tell us within $10,000 how much you got out of it? A. No.

The Court: Did you get so much you couldn't count it?

The Witness: I don't know. It is too far back for me to remember.

The Court: You remember all the other details, don't you?

The Witness: Well, I don't remember the money part.

Q. You don't remember the most important part.

The Court: Well, that's the least important thing about it, the money, I know, I understand; go on, go on.

Q. And you have exhausted your recollection on this, haven't you? You have searched your recollection thoroughly? A. You mean—

Q. Well, have you searched your recollection, your memory? A. What do you mean? As to the amount of money?

Q. To ascertain how much you got out of this combine. A. As far as I know, I don't know what I got out of it.

Q. You don't know what you got out of it? A. I don't.

(913) Q. And you didn't put anything in it? A. And I didn't put nothing in it.

Q. Wait a minute. You said that you represented Coste, that Coste was in there on the same basis that you were in there, is that so? A. I did.

Q. You said you made some kind of a claim on behalf of Coste? A. That's right.

Q. And you never did anything about it? You didn't sue Reinfeld, you made no demand on him of any kind, did you? A. I never sued nobody.

Q. You didn't make any demand upon him? A. No, I didn't.

Q. For—

Mr. Van Riper: If your Honor please, I object to that. The witness has already said he made a demand on him.

Mr. Tyne: I object to counsel—

The Court: No, he said he didn't sue him but he did say before that he had asked Reinfeld for his stock and the stock of the other man.

The Witness: That's right.

The Court: You remember that, don't you?

The Witness: Yes, that's right.

The Court: How much stock did you ask for?

(914) The Witness: Whatever he was going to give me.

The Court: How much? What percentage?

The Witness: Only what was coming to me. All I had was twenty-three hundred and—whatever that amount was; I don't know.

The Court: Twenty-three hundred dollars. You remember that twenty-three hundred, though, don't you?

The Witness: What?

The Court: You remember that twenty-three hundred, don't you?

The Witness: Well, Mr. Reinfeld told me that.

Q. Did you make a record of that? Did you write it down A. No, I did not.

Q. You didn't write it down? A. No.

Q. You relied on your memory for that, eh? A. (No answer.)

Q. So in so far as your alleged interest is concerned and that of Coste you made no demand upon Reinfeld at all, did you?

* * *

(915) Mr. Van Riper: All right. I object to it.

* * *

A. All I can recollect is, I was up there trying to collect it from Coste, that's all. I never demanded it of him, no.

The Court: You what?

The Witness: I never demanded it of him; but I was trying to get it for Mr. Coste's estate.

The Court: You were trying to get it for yourself, too?

The Witness: And myself, too, at the same time.

Q. Well, you remember testifying, Mr. Arnould, in the New York case; you were examined in New York, weren't you? A. That's right.

Q. Do you remember the occasion? And you gave testimony, and you were asked this question—

. . . . . .

Q. "You never made any demand for any interest you had in Browne Vintners as distinct from Coste's? Answer: No." (916) Didn't you so testify? A. That's right. I never demanded it of him, no.

Q. Well, you understood the question, didn't you? A. That's right.

Q. And insofar as Coste's interest was concerned you never made any demand on him for his alleged interest, did you? A. I said I made no demand; I just simply went up and asked for it, no demand; I just asked for it, that's all.

Q. And you said something about the children. You were executor of Coste's estate, weren't you? A. That's right.

Q. And you know, as executor of Coste's estate, you were responsible for collecting all of the assets? A. That's right.

Q. Yes. And as executor of Coste's estate you did nothing about any alleged interest in Browne Vintners, did you? A. That was up to Mr. George L. Bertram, South River. He was the lawyer for that estate and he knows all about it.

Q. The lawyer never instituted any suit, did he? A. No, he didn't.

Q. As a matter of fact, there was a debt due and owing from Coste to the Eagle Distillery Company, wasn't there? A. I do.

Q. And the estate paid that, isn't that so? A. What?

(917) Q. And the estate paid that, paid that debt. A. (No answer.)

Q. You as executor of the estate of Coste paid that debt, due and owing to the Eagle Distillers? A. That's right. It was paid to the Eagle Distillers.

* * *

Q. Well, that was a loan made by Reinfeld, was it not? A. It was a loan that Reinfeld loaned Mr. Coste.

Q. Something like $10,000, is that right? A. No, $2,000.

* * *

Redirect examination by Mr. Van Riper:

* * *

Q. Now, Mr. Arnould, the question that Mr. Tyne just read to you was this: "You never made any demand for any interest you had in Browne Vintners as distinct from Coste's, did you?" And you answered "No."

Well, did you have any interest in Browne Vintners distinct from Coste's or were they all three together, yours and Coste's and White's? A. And Bill White.

(918) Mr. Tyne: Oh, of course I object to that. That certainly is—

The Court: You had an interest yourself, didn't you?

The Witness: That's what I said, the three of us.

The Court: And Coste had an interest.

The Witness: And Bill White.

The Court: You said you had 4%, didn't you?

The Witness: I said the three of us—

The Court: And Coste had an interest.

The Witness: Not of Browne Vintners.

The Court: No, you had 4% of the bootlegging operation.

The Witness: That's right.

The Court: And you had 2300 in Browne Vintners.

The Witness: So far as I know.

The Court: And how much did Coste have in Browne Vintners?

The Witness: The same thing.

Q. And how much did White have in Browne Vintners? A. The same thing.

Q. Just one more question: You said you didn't put any money in but that you people were running rum before you got in with Reinfeld and Rutkin. A. That's right, that's right.

(919) Q. Did you have any assets, did you have any merchandise, any boats or anything? A. Well, we had trucks and stuff like that, and that's why we were brought in.

Q. Well, what did you do with those trucks and boats and so forth? A. Well, they were sold right into the combination.

Q. And did they go in to work for the combination? A. That's right.

Q. For the benefit of the combination? A. That's right.

The Court: Did you give them over and lose them yourself or did you retain them?

The Witness: Well, it was not giving them over, your Honor; it was just throwing them in; just throwing them in, and they used them just the same as they used the other stuff.

The Court: Well, who got them finally?

The Witness: Well, they belonged to the combination— Reinfeld, Rutkin and—

The Court: And they disposed of them, didn't they?

The Witness: They didn't dispose of them.

The Court: Who did?

The Witness: They worked them just the same as they worked the other stuff.

(920) The Court: Well, what happened to them finally?

The Witness: Well, finally they were sold—maybe some of them got grabbed.

The Court: Well, who sold them?

The Witness: Well, Mr. Reinfeld—

The Court: You mean the syndicate?

The Witness: The syndicate.

* * *

The Court: You didn't have them.

The Witness: No, no.

By Mr. Tyne:

Q. Well, how do you know the syndicate sold the things you spoke of? A. Well, they sold some; some may have been grabbed, and what was left the syndicate sold them.

Q. Well, what was left? A. Well, like trucks and everything.

Q. Well, who sold those? I want you to tell us of your own knowledge. A. Who sold them?

Q. Yes. A. Well, as far as I know, Marty Schneider sold some of the trucks; that I do know.

Q. And that's all you do know? (921) A. That's all I know.

Mr. Tyne: That's all.

John Thomas Callahan—for Defendant—Direct

By Mr. Van Riper:

Q. Mr. Schneider was a member of the combine, Marty Schneider, was he? A. Yes, he was, yes.

Mr. Van Riper: All right.

By Mr. Tyne:

Q. Well, you know he got paid off and got out of this combine, don't you? A. Well, that's something I don't know but I know he was in it when I was there.

* * *

JOHN THOMAS CALLAHAN, called and sworn as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Callahan, where do you live now? A. Sayreville, New Jersey.

Q. And what is your occupation at the present time? A. Electrician.

Q. How long have you been an electrician? A. About 30 years.

Q. But you haven't worked at it all that time, have you? (922) A. No, sir.

Q. And was there a time during prohibition that you were in the bootlegging business? A. Yes, sir.

Q. With whom were you engaged in the bootlegging business? A. I was in business for myself.

Q. All the time? A. No, sir.

Q. At the start? A. At the start.

Q. And then afterwards did you join someone else in the combine? A. Yes, sir.

Q. And whom did you join? A. I joined Mr. Coste, Mr. White, Mr. Arnould, Mr. Rutkin and Mr. Reinfeld.

Q. Do you know about when it was that you joined them? A. Yes, I joined them in the year of—about the latter part of '27 or '28.

Q. '27 or '28. Now, with whom did you arrange or make arrangements for joining that combine? A. Why, I didn't arrange with anybody.

* * *

(923) Q. Did you talk with someone about it or did someone talk with you? A. I was in Montreal buying a load of whiskey for myself.

Q. Yes. A. And I bought it.

Q. Yes. A. And I had it put on a boat by the Charles Edwards, Schooner, that I had purchased in Yarmouth, Nova Scotia, and I bought 1500 cases of whiskey from United Distillers, part of it, and a part from—another distillery there.

Q. Well, all right, it doesn't make any difference; forget it for the moment. You bought it and you got it—A. There was four or five partners there.

Q. All right, it doesn't make any difference. How did you come to go into the combine? A. Well, I met Mr. Reinfeld in Montreal and Mr. Reinfeld approached me to come into this combination with them, and I didn't want to go, I told them so, I was satisfied to be alone; and he talked, tried to persuade me, and I said no.

Q. All right. Then did you come back to the United States? A. Then I came back to the United States.

(924) Q. And did you see Reinfeld again? A. Two days afterwards.

Q. With whom? A. With Niggy Rutkin.

Q. Now, about what time was it? That is, about what year, do you know, when you saw Reinfeld and Rutkin? A. That was in—I believe in '28.

Q. '28. And do you know when you saw him? A. Yes.

Q. I mean, where you saw him. A. Yes.

Q. Whereabouts? A. In the Washington Hotel in South River.

Q. And did you live near there? A. Yes, sir.

Q. And they came? Did they come there to see you? A. Well, when they came there they spoke to me.

Q. All right. What was the conversation? A. About having me to come in with them, in the combination.

Q. What did they say What did you say? A. Well, I told them that I had my boat coming down and I gave it orders to keep coming and come in, and they wanted me to come in with them.

Q. They wanted you to do what? A. They wanted me to come in with them.

(925) Q. Did they tell you why they wanted you to come in? A. Yes; because at that time there was a blockade; as they called it, off the Jersey Coast here, at Sandy Hook and it was pretty heavy blockade and they couldn't get in.

* * *

Q. All right. They said there was some blockade and they couldn't get in? A. That's right.

Q. How could you help?

The Court: This was Rutkin and Reinfeld?

The Witness: That's right, sir; yes, sir, Judge.

Q. And how could you help? A. I worked down the Delaware, in South Jersey, and at that particular spot there wasn't any blockade because I—

Q. The blockade hadn't gotten there? A. What?

Q. The blockade wasn't in effect there then? A. No, sir.

(926) Q. Well, did you discuss that with them? Did they discuss that with you? A. They discused that with me.

Q. I see. And then did you agree at that meeting to go in or not? A. No, not—no, not at that meeting.

(927) Q. Did you have another meeting with him? A. The next day they came again.

Q. Where did they meet you, the same place? A. The same place.

Q. Rutkin and Reinfeld? A. Rutkin and Reinfeld, yes, sir.

Q. Was it '28 or '29? A. That was in, I believe, '28; '28, I believe.

Q. All right. What happened the second day? A. The second day they came again and they told me that they wouldn't be able to unload their five boats that was offshore there unless I would cooperate with them.

Q. That they would not be able— A. Not be able to unload it unless I would cooperate with them. So that I— they talked to me and I talked back to them; after a couple hours' talking, I joined with them.

Q. You mean you joined the combine? A. I joined the combination after I tried to find out what was what.

Q. I see. Well, did you find out what was what? A. Well, I had my boatload of whiskey coming down, they had theirs and I wanted to know what the deal was.

Q. Well, where were these five boats that you said they couldn't get in? A. They were offshore. As far as I know, they told me (928) they were offshore.

Q. I see. Now, you say you wanted to find out what the deal was; did you find out what the deal was? A. Yes, sir.

Q. What was the deal? A. Well, they asked me what I had invested in my cargo, 1,500 cases, and how much was in my boat that I just had brought from Yarmouth, Nova Scotia, for the particular trip, and it amounted to between 33 and 35 thousand dollars, that was my price on my cargo and boat. So then they got together and they figured up the price of their cargo, of the five vessels they had off-

shore, and they come to a conclusion that there would be 5 percent for me in this negotiation. So, I agreed to go along with them.

Q. You say they got together and figured; where did they do that, right there? A. In the Washington Hotel. It took about two hours.

Q. I see. They did all this right there at the meeting with you. A. Yes, sir.

Q. All right. Then you were to have 5 percent of the combine. A. That's right.

Q. And then they were partners, is that right? A. That's right.

Q. Then did you all work together? (929) A. Yes, sir.

Q. And did you bring the liquor in through your Delaware port? A. Well, I had brought two of their boats in, they were under foreign registry, and we knew the nights they were coming.

Q. What do you mean when you say you had brought two of them, what did you do to bring the boats in? A. Well, I made the arrangements up the Delaware River at the different drops that I knew of to unload these boats, and I brought them in there.

Q. With whom did you have to make arrangements? A. Well, we had to make arrangements with, Mr. Reinfeld and Mr. Rutkin and myself, made arrangements with the sheriff down there by the name of Mr. Evans, and also a surrogate down there by the name of Mr. Verne Marshall.

* * *

Q. All right. After those arrangements were made, were you able to bring the boats in? A. Oh, yes, we come in.

Q. Now, then, when the boats, when the boats came in were Reinfeld and Rutkin there? (930) A. Oh, yes.

Q. Did they do anything about the liquor after it got in off the boat? A. Well, Reinfeld and I would be in the Cumberland Hotel, together, making these arrangements.

Q. And where is the Cumberland Hotel, in what city? A. In Bridgeton.

Q. Bridgeton. And do you say you and Reinfeld would be in the Cumberland Hotel. A. Yes, sir.

Q. And you made the arrangements with these people whom you have talked about? A. That's right.

Q. Would those people come to the hotel? A. No, no, we would go to them.

Q. Well, did you make the arrangements in the hotel?

The Court: What, the sheriff come to a bootlegger? No, the bootlegger goes to a hotel.

A. Well, we went to Sheriff Evans' home.

Q. I see. Well, what did you do at the hotel, you and Reinfeld? A. Well, we had a suite, four rooms up there.

Q. You stayed there? A. Stayed there, yes, yes.

Q. You and Reinfeld stayed there at the same time? (931) A. Oh, yes, we would stay there ten or twelve days out of every month.

* * *

The Court: How often did you have to see the sheriff and surrogate there?

The Witness: We had to see the sheriff, we would work one night and the next night we wouldn't work, then we went around to pay him and when we went to pay him and we also had arrangements made with the sheriff that we were coming in the third night.

* * *

Q. How long did that situation go along in this combine? A. Well, we were down at South Jersey, in Bridgeton, and Cumberland County, twelve days a month for about eighteen months.

(932) Q. You mean you were bringing in liquor continuously, then, for a period of about eighteen months? A. Yes.

Q. Without any interference? A. No interference.

Q. Now, do you know Captain Bailey? A. Yes, sir.

Q. And was he? Where was he located? A. That was a different setup, sir.

Q. All right. Now, did you have something to do with the setup? A. That was after we got through with South Jersey; yes, sir.

Q. I see. Why did you leave South Jersey? A. Because there had been the blockade down that way.

Q. It finally got down there after 18 months? A. That's right; yes, sir.

Q. Then you came up to where? A. Back home, and we operated off Shark River.

Q. Shark River. And did you run into Captain Bailey then? A. I met Captain Bailey down there through Mr. Reinfeld.

Q. Yes. And was he a captain of the Coast Guard? A. Yes, sir.

Q. And where did you see Captain Bailey? A. Right at the dock.

(933) Q. And did you see him any other place besides the dock? A. Well, that's funny, but I will have to tell you that the first night we came in Captain Bailey wasn't on the dock, but Captain Bailey, after the negotiations of the night were over with, Captain Bailey was paid a dollar a case for all the cases that were unloaded there, which was, the first night come in between four and five thousand cases of whiskey and we had about 20 trucks down

there, and from what I gathered, from what I heard, not gathered, that Captain Bailey thought there was more whiskey unloaded that night.

Q. He got a dollar a case and he was dissatisfied with only four or five thousand cases, is that right? A. That's right, sir.

Q. Who paid him? A. Mr. Reinfeld.

Q. Now, how many times did you see Bailey on the docks? A. I saw Bailey on the docks, I saw him every time we unloaded down there except that first night.

Q. All right. Now, did you ever go to Bailey's home? A. I went to the Coast Guard station where he lived.

Q. He lived at the Coast Guard station? A. Yes, sir.

Q. And that is located where? A. About a block and a half away from where the Shark River Inlet was.

(934) Q. Well, with whom did you go to Bailey's Coast Guard station? A. With Mr. Reinfeld.

Q. With Reinfeld? A. Yes, sir.

Q. And did you hear any conversation between Reinfeld and Bailey? A. I was right there with him.

Q. And what was the conversation about, or what took place there? A. Well, the first night when Mr. Bailey was paid, he didn't like the amount of money, the amount of trucks that was there, he thought he was being cheated out of his count, that was the first night. Then the second night Captain Bailey was down on the dock and he was counting the cases for the trucks for himself to get the right count.

Q. He wanted an honest count? A. Yes, sir.

Q. All right. Now, then, how long did that go on at Shark River? A. Wel, I think we worked at Shark River around 8 or 9 months.

Q. And then what happened? A. Well, we continued there and we started working coming up the Raritan River

into South River, or Sayreville, (935) Sayre Fisher's brick plant.

Q. And did you unload there, do you mean? A. Yes, sir.

Q. And how long did you do that? A. Oh, we worked there, oh, I would say about a year.

Q. Now, during all this time was Rutkin working with the combination? A. Oh, yes.

Q. I see. Rutkin and Reinfeld worked and you were working? A. Yes, sir.

Q. All right. Now, then, some time along there you were arrested, were you not? A. Oh, I was arrested in the first, going in partners with Reinfeld and Rutkin, and the combination, we called it.

Q. You mean you were arrested early in the partnership? A. Oh, yes.

Q. I see. And you were arrested in connection with what, specifically? A. With this boat that I had coming down, and I had given orders to keep coming, not to stop. This boat made about 8 miles an hour and it took 10 or 12 days to come on down. At that time the captain had figured with me and I was to be in the Delaware River at the ship channel lighthouse to meet this boat 12 days after, that is what they had scheduled to meet them there, and this boat never made up the River, (936) the Coast Guard cutters had got it in the Delaware Bay.

Q. That was not Bailey's group? A. Oh, no, no, that was in South Jersey.

Q. All right. Now, at that time—was that after you joined the combination, when that happened? A. That is the boat that I went in the combination with.

Q. And as the result of all that, did you go to jail? A. Oh, I went to jail after, I had fought the case from 1928, I believe, until 19— the latter part of 1930.

Q. Well, subsequently, as a result of that, you were convicted and went to jail? A. Yes, in 1931.

Q. Now, then, did that end your participation in the combine, when you went to jail? A. Oh, no, no.

Q. Well, when you came out, was the combine still doing business? A. Still doing business.

Q. And did you go back with them? A. Well, all the time that I was in jail, nine months and eighteen days I went to jail for, and all the time I was in jail Mr. Reinfeld had gave my wife money for my not being home.

Q. Oh, your wife was paid while you were in jail? A. Oh, yes.

Q. I see. All right. Now, then, when the combine finally (937) broke up, did you have an interest in it? A. I was never paid out, sir; yes, sir.

Q. By the way, while this combine was operating, did you take any money out in the way of profits? A. Did I ever have any money out?

Q. Yes. A. Only what was given to me by the month.

Q. That is what I mean. A. Yes.

Q. Yes. Well, it was given to you by the month, you say? A. We would get splits by the month, yes.

Q. Who gave it to you? A. Why, Mr. Reinfeld.

Q. I see. Now, can you remember how much you got? A. Well, I can remember some of it.

Q. Yes. Well, about how much do you think you got a month? What do you think it would average? A. Well, some months I got as much as $8,500.

Q. That is a fair month's salary. A. Yes, at that time. And sometimes I would get, there was months I got 3,500, 3,800, and I think in the early part of the transaction I got as much as 12,000 one month.

Q. In one month? A. Yes. That was the first, beginning.

Q. And you got that from Reinfeld? (938) A. That's right.

Q. And I take it that you got that in cash? A. Yes, sir.

Q. Now, then, after you left Shark River did you see John Bailey any more? Is that his name, John Bailey? A. All I knew him by, the commander of the Coast Guard base there, Captain Bailey.

Q. All right. Well, after you left Shark River, did you see him any more? A. No.

Q. I see. A. No, I did not.

Q. Now, when the combine broke up you had received this money from time to time each month as you talk about? A. Yes.

Q. But did you still have an interest in the combine? A. Oh, yes.

Q. You had your investment in there, an interest? A. yes.

Q. Do you know how much that amounted to in dollars? A. Well, when I went up in 1930 we were having what we called a split and there was talk about the repeal coming in and Mr. Reinfeld done all the buying of this whiskey, 22,000 cases a month that we were buying, he was doing all the buying in Montreal and he met all these different people (939) and they decided they were going to start getting ready for legitimate business, in the latter part of 1930—this was told to me, and then I understand, I don't know for sure, that he went to England to try to get some different sales.

Q. Well, let's not get into the realm of transactions that we don't know except by hearsay, Mr. Callahan, if you will, please. Did you have a discussion, or did you participate in a discussion with Reinfeld in which there was talk about organizing a company going legitimate? A. Oh, Mr. Reinfeld is the man that told me they were going into legitimate business.

Q. He told you that? A. Yes.

Q. And did he tell you the name of the company they were going to organize? A. He didn't know, no, sir.

Q. Well, do you remember when they did go into the legitimate business, when they organized the business? A. Yes.

Q. I don't mean the date. Do you know when it happened? A. I remember Browne and Vintners, yes.

Q. You remember Browne and Vinteners. Now, did you have stock in Browne and Vintners? Did you have an investment in Browne and Vinteners?

* * *

(940) A. The money that we had left over in the combination was a bigger amount of money told to me, Reinfeld—told me a bigger amount of money than I heard on this stand here, we had—

The Court: You say you had shares in the Browne Vintners?

The Witness: Only that I am going to try to put this in Browne Vintners.

The Court: You say you had shares?

The Witness: Didn't have in shares, no, sir.

The Court: You had an interest in Browne Vintners?

The Witness: Only from the money; Judge—

The Court: Wait a minute. You say you had an interest in Browne Vintners?

(941) The Witness: I thought that I had, yes.

The Court: All right. Now, what made you say that you had an interest in it?

The Witness: Because this money that we left over—

The Court: Yes.

The Witness: —was put into—Mr. Reinfeld used that money for the Browne Vintners when he bought it.

The Court: How much, do you know that?

The Witness: Mr. Reinfeld told me.

By Mr. Van Riper:

Q. And you had an interest in this money that was left over? A. That's right.

Q. Did he tell you how much that money was that was left over? A. Oh, the figures of that staggers what he said here. He told me that they had around a million and a half dollars.

Q. Do you know when he told you that? A. Yes, this was some time in 1930.

Q. In 1930 it was a million and a half? A. Yes.

Q. But at the time they formed Browne Vintners do you recall whether he told you at that time how much they had? (942) A. Oh, he only told me at the time that they went into Browne Vintners.

Q. Yes. A. I didn't meet Mr. Reinfeld until 1934, after 1930, the latter part of 1930.

Q. All right. I see. In other words, you were told, as I understand it, Mr. Reinfeld told you that what was left over from the old combine would go into Browne Vintners? A. That's right.

Mr. Tyne: That isn't what the testimony is. I object to it.

A. Oh, yes.

The Court: He testified that Reinfeld told him that the money that was left over was going to be put into Browne Vintners. He said it was much more than he heard on this stand so far.

The Witness: Yes, sir.

Q. Now, did Reinfeld ever tell you what that interest of yours in Browne Vintners amounted to, either percentage or dollars? A. No, sir, he did not.

The Court: Did you ever ask him?
The Witness: Mr. Reinfeld—.
The Court: Did you ever ask him?
The Witness: No, I didn't Judge.

(943) Q. What did Reinfeld tell you? A. Mr. Reinfeld told me that when the combination was coming to an end on the bootleg end of it that I have done a very good job, he put his hand on my shoulder and told me, "You are in 5% of whatever I do in legitimate business."

Q. Now, then, you said you didn't see him again until 1934? A. That's right, sir.

Q. And when you saw him in 1934 did you talk with him about your interest in Browne Vinteners? A. I went up there to try to get some money off him, yes, sir.

Q. Did you try to get the money because of your interest in Browne Vintners? A. That's right.

* * *

Q. The Judge says never mind. What did Mr. Reinfeld say to you at that time, when you tried to get the money? A. Reinfeld told me that the corporation was just going along and we weren't making the kind of money that we made in the bootlegging days, we had to wait, but it (944) looked very good.

Q. And then did you see him again after that? A. I saw him about four times.

Q. And over how long a period of time, do you think? A. That was in the year of 1934.

Q. '34. And what was the substance of the conversation which you had with him on each of those four times? A. I just asked him how things was going and how things

looked, and he told me that we weren't making a whole lot of profit but things was going along all right and he was getting—reaching out and getting into other fields and we would do all right in the long run.

Q. Did he give you any money on any of those occasions? A. No, sir.

Q. Now, then, did there come a time when you heard that the Browne Vintners Company had been sold to Seagrams? A. Oh, yes, I heard of that after.

Q. It was sold in 1940, did you hear that? A. Yes, I heard that.

Q. Now, then, after that time did you see Reinfeld? A. I went up but I couldn't see him.

Q. Where did you go? A. Up to New York, Rockefeller Center.

Q. You mean to the Browne Vintners' offices? A. Yes, sir.

(945) Q. And how many times did you go there? A. Oh, I must have went there 25 or 30 times.

Q. And you never saw him? A. I couldn't get past the door; before I used to be able to walk in.

* * *

The Court: Did you see the receptionist?

The Witness: Yes, sir.

The Court: The blond that was here?

The Witness: Yes, sir.

The Court: Did she ask if you could see Mr. Reinfeld?

The Witness: Yes, sir, she said, "What is your name?" And I told her, "John Callahan." So she would call up and the word would come out Mr. Reinfeld isn't in. And I went up on another occasion and I asked the same thing and I got that four

or five times. Then I went up and they finally said to me, "Mr. Reinfeld is in Europe." And then I went up and, "Mr. Reinfeld is in Canada." So I got nowhere. I couldn't see him any more, until I saw him about two years ago in New York.

Q. When? A. About two years ago in New York.

Q. That was the time when you were giving testimony?

(946) A. I didn't give any as yet.

Q. You had no conversation with him at that time concerning this matter? A. I couldn't find him.

Q. So did you ever get any money for your interest in Browne Vintners? A. No, sir.

Q. Never got any money at all? A. No, sir.

Q. Mr. Callahan, you were otherwise known as "Chick," are you not? A. That's right.

Q. Where are you working as an electrician now? A. Why, I am working out of Local Union 358, Perth Amboy.

Q. I see.

* * * *

Cross examination by Mr. Tyne:

Q. How long did you say you served in jail? A. I served nine months and eighteen days, I believe that is the correct time.

Q. Were you convicted of any other crimes? A. Yes, sir.

Q. What? A. Bootlegging.

(947) Q. How many times? A. Well, I believe, to my best knowledge, maybe seven or eight times besides that.

The Court: How much time did you serve?

The Witness: I only served that one time, nine months and eighteen days.

Q. When you were down in—operating down in South River, you were operating alone, you said? A. Yes, sir.

Q. How long were you operating down there? A. Oh, I was operating down there in South River about two years, two years before I went in with—all alone.

Q. Before you went in with the Reinfeld group? A. That's right.

Q. And you had your own boat and you brought it into Delaware? A. Into South River when I started; in these days I worked in South River.

Q. Yes. But when you went down to Cumberland, you worked down in through there,—how long did you work down in there before you went in with Reinfeld? A. Oh, I worked there, I would say about seven or eight months.

Q. And is that where you brought this boat down that you talked about before, up the Delaware? (948) A. This particular boat that was caught?

Q. Yes. A. No, that was the first trip for that boat.

Q. That was the first trip for that boat? A. For that boat, yes.

Q. Did this boat take the same route that your other boats took? A. About the same route.

Q. Yes. And you knew the sheriff down there, did you? A. Oh, yes.

Q. And the surrogate? A. Yes, sir.

Q. And during that period of time that you brought these boats in you had greased the sheriff and surrogate to get the liquor in? A. Greased down?

Q. Yes.

The Court: That means pay them money for improper facilities offered.

The Witness: Yes, I paid them money, yes.

Q. And how much did you pay them during this period you operated down there? A. When I was alone?

Q. Yes. A. Well, at that time I used to bring in about a thousand (949) or eleven hundred cases, all at one time, on this boat that I owned, and it would come right on in. I had a radio communication on to it, two-way radio communication.

Q. Where did you transmit from? A. I transmitted from the roof of the Cumberland Hotel to my boat.

Q. And did you own the Cumberland Hotel? A. No, sir.

Q. You were in constant communication with it, is that right? A. Not constant, we'd have ours.

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(951) JOHN THOMAS CALLAHAN, resumed.

Cross examination (continued) by Mr. Tyne:

Q. Mr. Callahan, from the continuity of your testimony I believe we left off last evening on some testimony that you were giving on your activities down in Cumberland County.

(No response.)

(Side bar colloquy Court and counsel.)

The Court: The defendant has been called out for a perfectly legitimate reason so we will wait until he comes back.

* * *

Mr. Van Riper: The defendant is here, if your Honor please. Thank you.

(952) The Court: All right, you may proceed.

Q. Did you answer that question, Mr. Callahan?

Mr. Tyne: Will you read it, please?

Q. (Repeated by the reporter.) I think that's so, is it not? A. That's right.

Q. Just generally. A. Yes.

Q. Now, I believe you testified that you worked alone, you were in your own individual bootlegging operations, from 1926 to 1928? A. From 1926 to 1928? I believe it was just a little before, the latter part of 1925.

Q. Oh. A. To the latter part of 1927. I think that's the exact date.

Q. That's the date? A. To the best of my knowledge, yes, sir.

Q. To the best of your knowledge. And you were pulling in liquor down in the Delaware Bay, is that right? A. That's right, sir.

Q. How long had you been working down there, individually? A. I would say about 12, 13 months.

Q. Now, you testified last evening that you paid off to the sheriff and the surrogate of Cumberland County; is that (953) right? A. That's right, sir.

Q. And did you pay off to those officials in the period of 1925 to the end of 1927? A. Yes, sir.

Q. And that pay-off was to permit you to bring in the liquor without molestation, is that right? A. It couldn't work without having some protection, yes, sir.

Q. Now, when you were working in your individual capacity in this bootlegging operation did you pull in liquor at Shark River, too? A. Not at that time.

Q. Not at that time? A. No, not at that time.

Q. Was that after 1928? A. The Shark River incident was after we got through in South Jersey.

Q. Yes. A. We worked there about 18 months.

Q. No, you see, I am talking about your individual operations, not when you— A. Oh, individual; I worked alone only up the Delaware River.

John Thomas Callahan—for Defendant—Cross.

Q. And you did not work at Shark River Inlet nor at Sayreville, is that right? In the brickyard? (954) A. Oh, I worked at Sayreville before I went to South Jersey.

Q. Oh, you did? A. Yes, sir.

Q. And how long did you work there, in your individual capacity? A. I worked in Sayreville, oh, I believe, if the date is right, around 1924, the early part of '25.

(955) Q. I see. And you pulled in liquor at that time? A. That is when I used speed boats to come in.

Q. And did you ever pay off to any officials there to bring in the liquor? A. In Sayreville, no, sir.

Q. You did not? A. No, sir.

Q. So that when you started your operations with the Reinfeld group, you had the contacts down there in Sayreville, did you not—strike it out—Bridgeton? A. That's right, sir.

Q. And during that period of time that you were with the combine you arranged for the payoffs to the surrogate and the sheriff? A. I arranged it, with Mr. Reinfeld and I. I brought him to the sheriff and the surrogate.

Q. You brought him there, is that right? A. Yes, sir.

Q. Now, you testified, I believe, that when you joined up with the Reinfeld group your share of the combine was figured $35,000? A. That was what I had by my own when they had contacted me to come in with them.

Q. Yes. And you arrived at that figure by estimating the value of the cargo on the ship, the CHARLES EDWARD, is that (956) what it was? A. That's right, yes, sir.

Q. And was that a ship that was enroute from Canada to the Delaware Bay? A. No, it wasn't enroute from Canada, no, sir.

Q. Where was it enroute from? A. From St. Pierre, Miquelon, a French Island.

Q. Isn't that part of Canada?

The Court: It is in the Gulf of St. Lawrence; it is not part of the Dominion of Canada.

Mr. Tyne: Thank you, sir.

Q. Well, at any rate, it was enroute from the Island of St. Pierre to the Delaware Bay? A. That's right, sir.

Q. And the cargo, you say, was valued at $35,000? A. Counting the boat and cargo and the supplies.

Q. And cargo of liquor? A. And the supplies.

Q. That boat, you said, was estimated to take twelve days to make the trip? A. That's right.

Q. And that it got in the Delaware Bay and it was seized? A. That's right.

Q. So you never did get the cargo? A. Never got the cargo of that ship.

(957) Q. (Continuing) Of the ship seized? A. That's right.

Q. So that that couldn't have been counted into the combine with Reinfeld, could it? A. Oh, yes, sir; yes, sir.

Q. Did the group get any benefit out of that? A. They got the benefit that they brought in myself as a partner before that ship came in.

Q. No, please. Did the Reinfeld group—

The Court: The fact has been testified to that this ship was seized. I don't imagine that the corruption was so bad that after they seized a ship that it was turned back to the bootleggers again?

Mr. Tyne: The point I was making, your Honor—

The Court: It was seized.

Q. And the value of that is what you estimated your interest in the new combine which you were joining up with? A. That is the joining up, yes, sir.

Q. Yes. Now, you testified, I believe, that after a period of 18 months you moved from Bridgeton up to Shark River? A. We went from Bridgeton to Shark River, yes, sir.

(958) Q. Now you started down in Bridgeton in 1928 with the Reinfeld group; is that right? A. As far as I can recollect the latter part of '27 and '28.

Q. You say the latter part of '27. Do you mean December, 1927? A. I would say maybe some time in October, I am not too exact on that, of '27.

Q. '27. And you worked right through until when, eighteen months later? A. Eighteen months after that.

Q. That would bring you into 1929? A. No, I would say '27, '28—yes, into early 1929.

Q. March or April, 1929? A. Something like that.

Q. And you moved up to Shark River? A. That's right.

Q. And how long did you work there? A. We worked in Shark River about eight or nine months.

Q. Nine months? A. Eight or nine months.

Q. And then you moved up to where, Sayreville? A. Then we used to work in the brickyards in Sayreville.

Q. And how long did you work there? A. We didn't work there too long in there. I would say (959) four or five months.

Q. You got out of the combine in 1930, did you not? A. I never got out of the combine, no, sir.

Q. When did you go to jail? A. I went to jail in '31.

Q. Well, when did you terminate your activities with the combine? A. Well, my activities were still being carried on while I was in jail.

The Court: No, but did you personally cease in your participation—unless you were doing it in jail, I don't know.

The Witness: In the bootlegging days?

The Court: The bootlegging days.

The Witness: The combination broke up and the money that I had coming to me that Mr. Reinfeld—we had a talk about it.

The Court: No, the question is when did you cease your personal activities?

The Witness: I never ceased them.

The Court: Not even while you were in jail?

The Witness: No, sir.

The Court: What were you doing in jail?

The Witness: I was prosecuted for the time of that Charles and Edward boat.

(960) The Court: Were you then actively participating in the bootlegging activities?

The Witness: My percentage was going on.

The Court: I am not talking about that. It is a question of your active personal participation.

The Witness: Oh, no, not while I was in jail.

The Court: When did they stop?

The Witness: When I stopped going to jail.

The Court: No, when did you stop your active, personal participation?

The Witness: 1931.

The Court: Is that when you went to jail, you mean?

The Witness: Yes, sir.

The Court: When you came out of jail? When was that?

The Witness: March 6, 1932.

The Court: Did you resume your active participation then?

The Witness: Yes, sir.

The Court: Why didn't you say so?

The Witness: I didn't understand the question Judge, your Honor.

John Thomas Callahan—for Defendant—Cross

Q. You testified on direct examination that you stopped your active participation with the bootlegging combination in 1930. A. I didn't get that question.

(961) Q. Didn't you testify yesterday that you stopped your—

The Court: Have you the question and answer?

Q. Well, before I proceed with that may I ask this question: When did you last see Mr. Reinfeld? A. I saw Mr. Reinfeld to my recollection—

Q. Wait a minute. Let me phrase the question. Did you last see Mr. Reinfeld from the time you terminated your—strike that out.

When did you see Mr. Reinfeld prior to the time that you went to jail, last see him? A. After I went to jail?

The Court: No, before you went to jail.

A. Before I went to jail, Mr. Reinfeld before I went to jail—I had to go down to Wilmington, Delaware where my case had been tried and Mr. Reinfeld hired Mr. Holley, Louis Holley, in New York, an attorney, to go down there. My case was being brought up before I was taken in and Louis Holley was representing me for some purpose which Mr. Reinfeld sent him down there for on this particular case.

Q. Representing you for some purpose? A. For this Charles and Edward schooner.

Mr. Tyne: I move that the answer be stricken.

The Court: The question was when did you last see Mr. Reinfeld before you went to jail?

A. I believe it was in Mr. Holley's office in New York.

(962) The Court: How long before you went to jail?

John Thomas Callahan—for Defendant—Cross

The Witness: About six or seven weeks before I went to jail.

(963) Q. What year? A. The year 1931.

Q. When did you next see Mr. Reinfeld? A. I didn't see him until after I—after that?

Q. Yes. A. I didn't see him till I came out of jail.

Q. And when was that? A. That was in—about the middle of 1932.

Q. Sure of that? A. Yes, sir.

Q. Do you remember testifying yesterday in answer to—

Mr. Van Riper: What page?

Mr. Tyne: I will give it to you, Mr. Van Riper.

Q. (Continuing)—Mr. Van Riper's question—page 942

"Q. Yes.

"I didn't meet Mr. Reinfeld until 1934, after 1930, the latter part of 1930."

Do you remember testifying— A. I don't recall that.

Mr. Van Riper: If the Court please, I have no objection at all to the witness being confronted with yesterday's testimony, but I think it is an unfair question unless the prosecutor, the District Attorney, pardon me, will go back at least to the last question on the bottom of page 941, so the witness will know what he is talking (964) about.

The Court: Will you read that last question?

Mr. Tyne: The one I read before?

The Court: No, the bottom of page 941.

Mr. Tyne: Yes.

Q. "Q. But at the time they formed Browne Vintners, you do not recall whether he told you at the time how much they had? A. Oh, he only told me at the time that they went into Browne Vintners.

"Q. Yes. A. I didn't meet Mr. Reinfeld until 1934, after 1930, the latter part of 1930."

Didn't you so testify? A. I believe I did, yes, sir.

Q. Well, isn't it a fact that you didn't see Mr. Reinfeld between 1930 and 1934? A. I—I believe I saw Mr. Reinfeld right before I went to jail.

Q. You want to change that testimony then, do you? A. That I saw him right before I went to jail?

Q. Yes.

Mr. Van Riper: If the Court please, that isn't a change of his testimony.

The Court: The question is that he says he saw (965) Reinfeld before he went to jail.

When did you go to jail?

The Witness: In '31, sir.

The Court: '31?

The Witness: Yes, sir.

The Court: What part of '31?

The Witness: I think it was in June.

The Court: In June.

The Witness: To the best of my recollection.

The Court: Well, you said you saw him about six weeks before you went to jail?

The Witness: Yes, sir.

The Court: Yesterday you said you didn't meet Mr. Reinfeld until 1934, after 1930, the latter part of 1930.

The Witness: Well, I must have made a mistake there because Mr. Reinfeld did see me before I went to jail.

The Court: All right.

Q. Well, did you make any other mistakes in your testimony—

The Court: Did you see Reinfeld after you went to jail? Did you see him again after you came out of jail, or did you see him in 1934, as you said yesterday?

The Witness: I saw him in 1934, after I came out of jail.

The Court: That was the first time you saw him?

The Witness: I believe that was the first time, (966) Judge.

Q. I believe that you testified yesterday that you had a conversation with him in 1930, did you not? A. Oh, yes, yes, sir.

Q. And did you testify that he told you at that time that they were going to organize a corporation called Browne Vintners? A. No, sir.

Q. You did not? A. No.

Q. Did he tell you anything about organizing a corporation at that time? A. He told me they were going to go into a legitimate business.

Q. This was in 1930? A. Yes, sir.

Q. What part of 1930? A. I just can't remember that date, but I know it was said.

Q. And were you a part of this combination yourself? A. Which combination?

Q. Weren't you a part of the Coste, Arnould, White Callahan combination? A. No, sir.

Q. Not at all? A. Not at that time. That group?

(967) Q. Yes, that group? A. No, sir.

Q. Well, you hesitate. Is there any question in your mind about it? A. Well, I thought they—I was with Coste, White and Arnould when they joined—got me to join with Mr. Reinfeld and Mr. Rutkin,—

The Court: Before you joined Reinfeld and Rutkin, had you been working with Coste and the other two?

The Witness: No, sir, no, sir.

Q. Did you know Mr. Coste? A. Yes, sir.

Q. And was he one of the pullers of liquor where you were working? A. Yes, sir.

Q. Did you know Mr. Arnould? A. Yes, sir.

Q. And was he a puller of liquor, at that time? A. Yes, sir.

Q. And Mr. White? A. Yes, sir.

Q. And did you work—

The Court: They didn't have any interest in your boat, the Ed and Charley, whatever it was called, did they?

The Witness: They had an interest in my boat (968) only when I joined the combination that they belonged to.

The Court: No, no, before that.

The Witness: No, sir, no, sir.

Q. All right. A. No, sir.

Q. Now, when you joined with the combination, the Reinfeld combination, you did come in with Coste, White and Arnould, did you not? A. No, sir, they were already in the combination.

Q. They were already in the combination? A. Yes, sir.

Q. And I understand you to say, then, that you had nothing to do with Coste insofar as the separate combination is concerned, is that right? A. Nothing at all whatsoever; nothing at all.

Q. Nothing at all. And Coste didn't speak to you at any time? A. Not to my knowledge, no, sir.

Q. Did White or Arnould speak to you at any time? A. No, sir.

Q. Did you get individual splits of the proceeds of these operations at the time you joined the Reinfeld group? A. Yes, sir.

Q. You were paid? A. Yes, sir.

(969) Q. (Continuing) Yours, is that right? A. Yes, sir.

Q. And I believe you testified that you were paid monthly? A. Every month, we got our split; we would be called in, yes, sir.

Q. And you got from 3,500 to 12,000 dollars per month? A. Some months it was 35 and some months it was maybe 6,000, some months were 8,000, 8,500.

Q. Some months 12,000? A. I recall one month of getting 12,500, I believe it was.

Q. 12,500? A. I believe that's the amount.

Q. Did you ever get 15,000 a month? A. Did I ever get 15,000 a month? I don't recall.

The Court: In any one month?

The Witness: No, I don't recall that much, that figure, no.

(970) Q. How much did you estimate that you earned from the time that you came in with the Reinfeld group and Rutkin, as you say, until the time you got out? A. I never did go into that figure.

Q. You never did go into that figure? A. No, sir.

Q. It was rather substantial, wasn't it? A. It was quite a sum.

Q. Yes. I believe you said you were known as a "puller', is that right? A. Well, I never heard that word used before, only from you, sir.

Q. Well, what was your participation in this, what was your work? Did you go out and get the stuff and bring it in and sell it? A. No, I had my men that I hired to go out on these boats and to go out and get it.

Q. Go out and get it? A. Yes, sir.

Q. And bring it in? A. That's right.

Q. And sell it? A. I sold it myself.

Q. You sold it yourself? A. Sure, my stuff that I brought in, yes.

(971) Q. Well, you paid Reinfeld for the stuff that you brought in, didn't you? A. Ah, no, sir.

Q. You did not? A. No, sir, never, never.

Q. Well, what year—strike it out. Did you have several hundred cases of liquor in your house when it was siezed? A. Yes, several hundred, yes, sir. I can't recall the figures, but it was quite a few cases.

Q. And that was your own liquor, wasn't it? A. I don't recall whether I owned that liquor, myself or not, but I remember it was stored in my house.

Q. Stored in your house? A. And seized there.

Q. And seized there? A. Yes, sir.

Q. And that was during the time that you were tied up with this group, the Reinfeld group, wasn't it? A. Ah, no, sir.

Q. No? A. I don't think so.

Q. You don't think so? A. I don't think that was the time. It might have been.

Q. Yes. A. It might have been.

(972) Q. Yes. And if it was, that was liquor that you had purchased as a puller of liquor for yourself and for re-sale, isn't that so? A. If I owned it all myself, I don't recall it, it would be for that purpose, yes, sir.

Q. And on which you made a profit? A. That's right.

Q. And you arranged for the distribution of it, didn't you? A. I don't quite understand you, distribution.

Q. You sold it and distributed it? A. I sold it and people come to my place and picked it up and took it away.

Q. You were given an interest in this combination, other combination, the Reinfeld combination, in order to have

you purchase liquor from Reinfeld, isn't that so? A. Oh, no, sir, no, sir, definitely no.

Q. This was sort of a competitive business, was it not? A. I don't understand what the word competitive means, sir.

Q. Let me put it more simple then. There were a number of ships out there under the control of various persons other than Reinfeld, and they were out there to sell liquor off shore? A. At what time are you talking about, sir?

The Court: During this bootlegging period was all the liquor handled by one person or was there competition?

(973) The Witness: There was competittion out there.

The Court: In the first part of the bootlegging there was competition?

The Witness: Yes.

Q. Wel, then, there was competition right up until the end, wasn't there? A. No.

Q. None at all? A. Not that I know of.

Q. Well, weren't you offered a percentage as an inducement to go out and purchase liquor from the boats that were being used by the Reinfeld combination? A. No, sir.

Q. You did not? A. No, sir, no, sir.

The Court: That is an insinuation.

Q. Going back to 1930 when you had this conversation with Mr. Reinfeld, you talked about organizing a corporation, is that right? Did I understand you to say that?

Mr. Van Riper: I object, if your Honor please. The witness specifically said that it was not the combination.

The Court: No, he said there was talk about going into a legitimate business.

Mr. Tyne: Well, legitimate business.

The Witness: That's right.

(974) The Court: Were any details given to you about what the business was?

The Witness: He told me that we were going into legitimate business and he, being the buyer of the combination all the time that we were into it, when I was with him, that he knew all these different people in Canada, Mr. Bronfman and different ones that were liquor salesmen there that is acquainted with, and he would be the most appropriate man to see these people to contact in legitimate business. And he also mentioned about going to Europe and getting different agencies, and this money that we had left over from the bootlegging syndicate was going to be used to get them contacts and try to get agencies with.

The Court: That was in 1930?

The Witness: He spoke of that.

Of course, it looked like the repeal was coming in, everybody could see it, and I wanted to get in legitimate business with him. I always knew Mr. Reinfeld at that time was a good businessman, and I thought he would be a good man to be with, so I left my money stay there with him in his hands.

Q. You left your money stay there? A. What money I was supposed to get, yes, sir.

Q. Well, didn't you hear Mr. Kanengiser and Fa-her (975) say they bought out your interest? A. Mr. Kanengiser—

Q. Oh, no, just answer the question. A. I heard them say that, yes, sir.

Q. Both Mr. Kanengiser and Mr. Facher said they bought out your interest in 1930? A. I heard them testify to that.

Q. Yes. Well, you say that that is not a fact? A. They didn't buy my business out; if they bought it they must have bought it through Mr. Reinfeld, they didn't buy it through me, no, sir.

Q. Whoever they bought it from, they held your interest, didn't they? A. Not to my knowledge, no, sir. I never knew it.

Q. And did you hear them say that your interest was tied up with Coste, White and Arnould?

Mr. Van Riper: Now, if your Honor please, I object. I am quite sure that is not what Kanengiser or Facher said.

The Court: I don't think it is material, anyhow.

Q. Well, your activities, actual activities, you say, stopped in the latter part of 1930? A. Did I understand you to say that—

The Court: They stopped when he went to jail.

A. It stopped when I went to jail.

(976) Q. When you went to jail? A. Yes, sir.

Q. Well, prior to the time that you went to jail you spent a lot of time in court, didn't you? A. Oh, yes.

Q. Yes. A. Yes, sir.

Q. And, of course, during the time that you spent in court you weren't devoting any time to the bootlegging activities, were you? A. Oh, yes.

Q. You were? A. Yes, sir.

Q. While you were in court? A. Not while I was in court, when I got through with court. Court was in the day time.

Q. I see. You would get through court in the day time and then go bootlegging at night? A. I did, yes, sir.

Q. And how long did that continue? A. Well, I was only in court a couple of days on each occasion. I would be there maybe four or five hours in court.

Q. For how many days? A. Oh, a few days; it didn't go on many days. I went to (977) court, sir, when the Charles Edwards—

The Court: Well, while you were in court you were not actually, at least I hope, conducting bootlegging operations?

The Witness: Not while I was in court.

The Court: But as soon as you left there?

The Witness: As soon as I left court, yes.

Q. Now, can you give us any idea how much time preceded, or how much elapsed time there was between the time you first went to court and the time you went to jail? A. In particular in this case? About this case?

Q. Let me ask: Were there a number of cases? Are you confused with any particular case? A. Just this case in Delaware you are speaking about?

Q. Yes. A. I want to get the right case.

Q. You had six or seven cases? A. I had six or seven cases, yes, sir.

Q. Yes. You have the right one? A. Can I hear the question again, please, sir?

(978) Q. Yes, sir. Maybe I had better rephrase it. How much time elapsed between the time you went to jail and the time you started to go to Court in connection with your case? A. Oh, it went into a few years.

Q. A few years? A. Yes, sir.

Q. And during those few years, how much time did you spend in Court? A. I was in Court—

The Court: I don't think that is important.

A. (Continuing) I was tried twice for that case, sir.

Q. How much time did you spend in Court in connection with your five or six other cases? A. I just went in and pleaded guilty.

Q. And you were right out again? A. Well, it didn't take that fast. My name come up and I was represented by an attorney and I pleaded guilty and was fined.

Q. And did you go back that night to bootlegging activities? A. I wouldn't say that night.

Q. The next night? A. Well, some time thereafter; it might have been the next night.

Q. Now, you never took any active part in Browne Vintners, did you? (979) A. No, sir, no, sir.

Q. You never got any shares in Browne Vintners? A. No, sir.

Q. You never saw Mr. Reinfeld, did you, in connection with Browne Vintners? A. Oh, yes, sir.

Q. You did, eh? A. Yes, sir.

Q. When? A. In his office.

Q. When was the first time? A. I ain't too sure, but I believe it was in 1934.

Q. Is that the first time? A. That's the first time I was in Mr. Reinfeld's office in Browne Vintners, yes, sir.

Q. And where was the office at that time? A. At Rockefeller Center.

Q. Did you go up there to borrow any money? A. No, sir.

Q. Did you borrow any money? A. No, sir, no, sir.

Q. And when was the next time you saw him? A. I believe it was about three months later.

Q. And where did you see him then? A. At Browne and Vintners.

(980) Q. Do you know when Browne Vintners was sold? A. Only what I read in the paper.

Q. And that was the first you knew it had been sold, is that right? A. Yes, sir.

Q. When was the last time prior to the time you read about Browne Vintners being sold, that you saw Mr. Reinfeld? A. I didn't see him, or I tried to see him but didn't.

Q. How many times did you see him in 1934 until you read about Browne Vintners being sold? A. I think I saw him about eight or ten times.

Q. About eight or ten times? A. In that time.

Q. You saw him? A. I saw him. I was in the office.

Q. Where was his office the first time you saw him in 1934? A. I am confused on that. I know it is up in New York City—I think it was in Rockefeller Center.

Q. Rockefeller Center? A. Yes.

Q. Will you describe the office? A. Yes. I went up on an elevator. I went into this big building and I walked over to the elevator and went up. I don't recall the number of the floor but I went upstairs, I got off the elevator and I asked the girl, the person (981) was riding the elevator—I don't recall if it was a girl or man—where Browne Vintners' office was and they pointed it out to me.

Q. And that was in Rockefeller Center? A. I believe I am right.

Q. That is about 42nd Street? A. I don't know much about New York.

Q. Was it uptown New York? A. Uptown, downtown, I don't know.

Q. Well, now, you are testifying, Mr. Callahan—is Rockefeller Center in uptown New York? A. I don't know. It is Reinfeld—

Mr. Van Riper: I object to whether it is up or downtown is a matter of opinion.

Q. What street is it? A. I can't recall the name of the street, but I went to Rockefeller Center.

The Court: How did you get there?

The Witness: I drove in by car.

The Court: Did you park your car at Rockefeller Center?

The Witness: No, I parked my car at a parking place and got a taxicab to Rockefeller Center.

Q. You asked the taxicab driver to drive you to Rockefeller Center? (982) A. That's right.

Q. Don't you recall the Browne Vintners' office was in a Wall Street in '34? A. I can't recall.

Q. Well, are you testifying about something we don't know about, something that never happened? A. I know I met Mr. Reinfeld. I am a little confused about whether it was in Rockefeller Center.

Mr. Van Riper: I ask that that be stricken out from "I am a little confused."

The Witness: I know that I went to Rockefeller Center to see Mr. Reinfeld but it is so long back that I could be confused on the month or day or year. I can't remember everything. I am trying to do the best I can. I know that I went to see Mr. Reinfeld. That was in the Browne Vintners' office.

The Court: And the Browne Vintners' office at that time, you say, was in Rockefeller Center?

The Witness: To the best of my knowledge; I ain't sure.

The Court: You got a taxi to go there?

The Witness: Well, I remember going there, your Honor, but I can't recall the instance too well.

Q. Where did you see him the second time? A. I saw him in New York again.

(983) Q. Where? A. I believe—I am confused on the offices,—I don't even remember myself going down to—I might be confused on that year,—I never remember going down to—did you call it Wall Street?

Q. Yes. A. I never remember going to Wall Street.

Q. So then you couldn't have seen him in Browne Vintners' office in '34, could you? A. If he wasn't there in that year, then I am wrong in the year.

Q. All right. Now, will you just search your memory and tell us what year it was that you first saw Mr. Reinfeld after you got out of jail? A. I can't just recall, but it wasn't long after I got out. I don't recall whether it was Wall Street.

The Court: Where did you see him?

The Witness: I saw him at Rockefeller Center.

The Court: And that was right after you got out of jail?

The Witness: Not right after, some time after.

The Court: Well, how much after?

The Witness: Oh, it might have been a year and a half after, a year and nine months.

The Court: About 1932, is that right?

(984) The Witness: Oh, I was in jail in '32.

The Court: All of '32?

The Witness: March of '32.

The Court: My recollection—I may be wrong about this, Mr. Van Riper—my recollection is he said he saw Mr. Reinfeld in 1932.

Mr. Van Riper: I think, if your Honor please, if my recollection is correct, he said he saw him in '34.

The Court: No, he said '34 and that was questioned by Mr. Tyne because he had said yesterday he didn't see him until 1934, but today he said he saw him in '32 and that was the reason for asking.

the question. But the jury will recall. Now, your best recollection now is what?

The Witness: That it wasn't in '32 at all.

The Court: When was it?

The Witness: I believe my best recollection, it was in 1934.

The Court: Well, that was two years after you got out of jail.

The Witness: Something like that; yes, your Honor.

Q. Well, you didn't see him—your testimony now is that you didn't see him in '32? A. Oh, I didn't see Mr. Reinfeld in 1932; I don't recall that I did—after I come out of jail—I believe the best of my knowledge after I come out of jail in 1932—

(985) The Court: In March.

A. (Continuing)—in March—I come out March 6th—I think it was about a month later than that that I went to a place at Branford Place in Newark here, Branford Place, and I inquired there and I don't recall who I met but I do think that I spoke to Mr. Reinfeld over in Branford Place in a building over there.

The Court: In 1932?

The Witness: After I had come out; yes, sir.

The Court: Well, now—

The Witness: That was after I come out.

The Court: You have told us that you didn't see him in 1932 and that you did see him in 1932 and that you didn't see him until 1934 and that you saw him first after you came out of jail in Rockefeller Center. Now take a few moments to straighten it out in your mind.

The Witness: What I can see very clearly about this Branford Place, it might have been after that.

The Court: Is that where the elevators were that you asked where the office was?

The Witness: We used to have an office—

The Court: No; is that the place where you say you went up in the elevator and asked the girl?

The Witness: Oh, no; that was in Rockefeller Center.

The Court: Now when was that?

(986) The Witness: I can't recall the year of that, sir. I can't recall the year, but I do remember meeting that girl after I had made a visit there before to Mr. Reinfeld. I used to go right in then and then they put this girl on the door and you had to give your name.

The Court: Well, when was that?

The Witness: I am confused on the year. (987) I am really confused on the year of that.

The Court: Go ahead, Mr. Tyne.

Q. Now, do I understand your testimony to be that you can't tell us when that was, is that so? A. I am confused on the year on that but I do remember going and seeing him, yes.

Q. But you can't tell us what year it was? A. It is hard for me to remember that.

Q. Hard for you to remember. A. Yes.

Q. Although you remembered all these other details— A. Oh, yes.

Q. —going back to 1936. A. Yes.

Q. And you can't remember that. A. Yes.

Q. When was the next time you saw Mr. Reinfeld, if at all? A. I didn't see him no more. I went up there to try to see him but couldn't see him.

Q. Then I understand your testimony is that you saw Mr. Reinfeld twice, up until the time—from the time that you got out of jail up until the time—or thereafter? A. No, I think it was six or seven times I saw him.

Q. Well now, Mr. Callahan, what is the fact, what is the truth here? You just testified that you saw him once in (988) 1932, then you said it was 1934, and you changed that back to 1932, and then you said you didn't know what the year was, then you saw him again. A. I remember going up there but I can't recall the year.

Q. Please, please,— A. Yes, sir, yes, sir.

Q. Isn't that your testimony, that you saw him twice and you didn't see him again after that? A. I don't think that was my testimony.

The Court: Well, how many times did you see him?

The Witness: To my recollection, best recollection, I saw him about six or seven times, Judge.

The Court: Where?

The Witness: At Browne and Vintners, in the Rockefeller Center, Browne and Vintners, New York.

The Court: Was that before they got the receptionist that told you he wasn't in?

The Witness: Yes, yes, sir, yes, sir; and after the receptionist got there I had to mention my name, and that was about thirty-five or forty times I went up there, and every time I went to the door the receptionist would meet me and want my name.

The Court: Was that the same place that you first met him in New York?

The Witness: Yes, sir. And the receptionists (989) were always telling me, "I am sorry, Mr. Callahan; Mr. Reinfeld isn't in." Sometimes they

would tell me he was gone to England. I would ask her when she expected him back and she would say he has gone to England, or he went to Canada, and that's the answer I got from the receptionist.

Q. Do I understand your testimony to be then that when you went to see Mr. Reinfeld, whether or not you saw him, it was at this one building? A. Yes.

Q. In Rockefeller Center? A. Yes; that's the only place I ever went to see Mr. Reinfeld.

Q. Always the same office, is that right? A. Oh, I don't know about that. I would ask for Browne and Vintners in the elevator and—

The Court: The same building?

The Witness: The same building, yes.

Q. The same building? A. The same building.

Q. Did you ever write Mr. Reinfeld a letter? A. Did I ever write—?

Q. Yes. A. No, sir, never.

Q. Did you ever make a written demand on him for any (990) alleged interest you had in Browne and Vintners? A. Oh, no, sir, no, sir.

Q. Did you ever start suit against him? A. No, sir.

Q. Did you ever retain a lawyer? A. No, sir.

Q. Did you ever consult a lawyer about it? A. Yes, sir.

Q. Was anything done by the lawyer in your behalf? A. No, sir; because I didn't have any money to retain a lawyer.

Q. Well, you made from thirty-five hundred to twelve thousand five hundred a month during this lush period? A. Very true, sir.

Q. And you didn't have any money? A. Not to hire a lawyer to go in to find out about my deals that I had left with Mr. Reinfeld, no, sir.

Q. As a matter of fact, you were looking for Mr. Reinfeld, if you were looking for him at all, in order to borrow money, isn't that so? A. No, sir.

Q. Now, you never asked Mr. Reinfeld, did you, what your interest was, this interest you claimed, in Browne Vintners? A. I never asked him what was my interest in there, no.

Q. No.

(991) Mr. Tyne: No further questions.

Redirect examination by Mr. Van Riper:

Q. Just one question, please, Mr. Callanan. In the bootleg days did you know a man by the name of Phillip Hollander? A. I didn't hear you.

Q. In the bootleg days did you know a Phillip Hollander? A. Oh, I know Mr. Reinfeld has used the name of Phillip Hollander, yes, yes.

Mr. Tyne: I object to that, if the court please.

A. (Continuing.) That was the name he used in South Jersey.

The Court: What is the purpose of that?

Mr. Van Riper: I just want to show the fact. That was the fact.

The Court: Well, there are an awful lot of facts that have no concern with this case.

Mr. Tyne: I ask that it be stricken.

The Court: No.

Mr. Van Riper: No, if your Honor please—

The Court: No, I won't strike it. So many different names had been used here it doesn't make any difference if we add one more.

All right, step down.

Mr. Van Riper: Mr. Mehler.

Max Mehler—for Defendant—Direct

(992). MAX MEHLER, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Mehler, where do you live? A. I live in South Orange.

Q. And you are a practicing attorney of this State? A. I am, sir.

Q. And you have been practicing at the Bar of this State for how many years? A. 21 years.

Q. With offices here in the City of Newark? A. That's correct.

Q. Now, Mr. Mehler, you know Mr. Reinfeld, do you not? A. I do.

Q. And you know Mr. Rutkin? A. Yes, I do.

Q. Now, in 1943 were you associated with Mr. Frederic M. P. Pearse representing Mr. Reinfeld? A. That's right.

Q. And was Mr. Popik, David Popik, also associated with you and Mr. Pearse in that? A. That's right.

Q. And was your representation of Mr. Reinfeld concerned with the matters that have been discussed here in this trial? A. It had to do with some claims.

(993) Q. Now, do you recall about when you first became associated with representing Mr. Reinfeld I mean about the date? A. I would say the early part of 1943.

Q. And after you became so associated did you have a conference at which Mr. Reinfeld was present? A. Yes, I did.

Q. And who else was present at that conference? A. Well, we had several conferences with Mr. Reinfeld. I don't remember the sequence, but I know that we had conferences at which Mr. Pearse, Mr. Reinfeld, Mr. Popik, Mr. Cohen and I were present.

Q. And by Mr. Cohen I take it you mean Mr. Sam Cohen? A. Sam Cohen.

Q. The accountant that's been referred to here. A. That's right, sir.

Q. All right. Now, will you tell us at those conferences what information was conveyed to you with reference to the claims which were being presented?

Mr. Tyne: Now, of course, I object to it.

The Court: Unless, of course, it was a confidential communication between attorney and client, because no one was present except his client, and the lawyer.

Mr. Van Riper: That's right. Well, I understand there is no claim of that being made.

(994) The Court: I don't know. I said unless that's so.

Mr. Van Riper: Well, may I ask the question?

The Court: Yes, surely.

Q. Go ahead.

Q. Go ahead. A. Shall I answer the question?

Mr. Tyne: I object to the question. I have already objected, sir.

The Court: Well, I mean if he wants to claim the privilege, let him claim it.

The Witness: Well, I do feel that I am not permitted to speak—

The Court: All right.

The Witness: —unless I am released by my client.

The Court: All right.

The Witness: It is a confidential communication.

The Court: All right. Objection sustained.

Q. You mean you have raised the question of privilege?
A. Well, I feel that—

The Court: It is his duty.

A. (Continuing.) It is my duty.

The Court: It is his duty to raise the claim, if it is a confidential communication, by his client.

Q. Did you negotiate or participate, Mr. Mehler, with Mr. Pearse in negotiating claims as between Mr. Reinfeld (995) and some other people? A. Yes, sir.

Q. And did you negotiate claims between Reinfeld and Zwillman and Stacher? A. That's right.

Q. During those negotiations were you informed as to any arrangements that had been made between Reinfeld and Zwillman and Stacher in Holtz' house? A. Yes.

Q. And what arrangements were you informed had been made in Holtz' house?

Mr. Tyne: Now, I object, if the court please.

The Court: Is this the discussion that Mr. Kessler referred to where there were back and forth discussions between both counsel?

Mr. Van Riper: I don't know. I am not referring to any particular discussion, if your Honor please. I am just asking the witness if he received that information.

The Court: Well, I mean, you see, Mr. Van Riper, unless you specify, it may be a situation which Mr. Mehler feels that it is a confidential communication. If it is an open discussion with Kessler and Zwillman and all the others, that's a different thing.

Mr. Tyne: That I have no objection to.

The Court: A discussion between counsel.

(996) Mr. Tyne: That I have no objection to, sir.

Q. Mr. Mehler, did you attend some conferences in Mr. Kessler's offices at which Reinfeld was present and Rutkin was present and Zwillman was present and Stacher was present? A. Yes.

Q. And at those conferences Mr. Pearse and Mr. Popik were also present, were they not? A. Yes.

Q. You appeared and Popik representing Reinfeld and Kessler representing Zwillman and Stacher? A. That's right.

Q. And Mr. Cohen, was he present too? A. Yes, I saw Mr. Cohen at that office.

Q. Now then, at that time, at the conference in Kessler's office—incidentally, was there one or two conferences that you attended in Kessler's office, with all those people present? A. I would say that there were at least two conferences at which all those people were present.

Q. And at that time, at either on or both of those conferences, was anything said about any arrangement that had been made between Reinfeld and the other people that were at Holtz' house?

Mr. Tyne: Now, I object, if the court please (997) There are two separate situations to be distinguished.

The Court: Well, at either of these conferences the matter was brought up of discussion at Holtz' cellar. I think it is a proper question. I will allow it.

Mr. Tyne: Well, may I have the speaker identified and the particular transaction they are referring to?

The Court: Well, when he tells it.

Mr. Tyne: All right.

The Court: He has intelligence enough to say who said what, if he recalls it.

The Witness: May I have the question read, please?

The Court: Reframe the question.

(998) Q. Mr. Mehler, will you tell us, please, whether or not at either or both of the conferences in Kessler's office that you have just referred to, that there was any discussion with reference to an agreement which had been made at Holtz' house? A. It was referred to, yes.

Q. And how, in what manner was it referred to?

The Court: And by whom?

The Witness: I think I may have to state something preliminarily.

The Court: All right.

A. There had been discussions with Mr. Reinfeld and Mr. Popik and Mr. Cohen, Mr. Pearse and myself, aside from any conferences with Mr. Kessler. There were several conferences that I just spoke of at Mr. Kessler's office.

The Court: The question now is—

A. (Continuing.) At the end—

The Court: Wait a minute.

The Witness: I am sorry, sir.

The Court: The question is now: was there a discussion at the conference at which Kessler was present, and all the others mentioned, about some agreement made in Holtz' cellar? You don't need any preliminary statement as far as I am concerned.

The Witness: I will answer that question, yes.

(999) The Court: Tell us what it was.

The Witness: I think it was at the last meeting, Mr. Reinfeld said—we may have said it on his behalf,

that Reinfeld would pay to Mr. Zwillman and Mr. Stacher the amount that he had agreed to pay them prior to our retention.

Q. By that—if you said it, did you refer to the meeting in the house, in Holtz' house A. Yes, that's right. We had been told about that.

Q. I see. All right. Now, then, at the last meeting in Kessler's office was there considerable discussion about the merits of the Zwillman-Stacher claims? A. At the discussion that—or the conference that I have just described, there was some discussion; I don't recall how long it lasted, but at that point we said that Mr. Reinfeld would not pay any more money than the amount that he had agreed to pay in the cellar meeting at Mr. Holtz' home, and that he wouldn't pay anything on account of the claims that had since been asserted.

Q. And did that represent Mr. Reinfeld's views on that? A. Oh, yes, yes.

Q. Now, then, there came a time at that conference, did there not, Mr. Mehler, when Zwillman and Stacher agreed to either abandon their claims or at least to accept the $358,000? (1000) A. They said they would accept the settlement that had been previously arrived at between Mr. Reinfeld and Zwillman and Stacher.

Q. And that was $358,000, wasn't it? A. It was approximately that, I don't recall the exact amount.

Q. They said they would accept it and Reinfeld agreed to pay it? A. Oh, yes.

Q. Now, then, at that time did Rutkin say anything? A. Yes.

Q. What did Rutkin say? A. Rutkin said, I don't remember exactly what he said, but he said, "How about me?" or words to that effect.

Q. All right. Then, did Mr. Kessler say anything to Rutkin or to Reinfeld? A. I think it was at Mr. Kessler's suggestion that Mr. Reinfeld and Mr. Rutkin went into another room.

Q. You saw them go into the room. Now, did anybody else go in with them? A. Not that I recall.

Q. Did you see them come out of the room subsequently? A. Yes, I did.

Q. And when they came out of the room, was anything said by either one of them? (1001) A. I think Mr. Reinfeld it was who said that he was going to pay Mr. Rutkin $250,000.

Q. Had you heard that figure of 250,000 with reference to Rutkin before? A. Oh, yes.

Q. From whom? A. Well, I had heard that at private discussions before.

Q. All right.

Mr. Van Riper: Cross examine.

Mr. Tyne: No questions.

(Witness excused.)

* * *

JAMES RUTKIN, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Rutkin, you are the defendant in this case, are you not? A. Yes, sir.

(1002) Q. You just gave the name of James Rutkin. Do you sometimes go by the name Abe Rutkin? A. No, sir.

The Court: What is your right name?

The Witness: My born name is Abraham Rutkin.

Q. When were you born? How old are you? A. Fifty-one.

Q. Did you go to school in Newark? A. Yes, sir.

Q. What schooling did you have? A. Camden Street, Newton Street and 13th Avenue School.

Q. In other words, grammar school? A. Yes, sir.

Q. After you got out of school, did you go to work? A. Yes, sir.

Q. Whereabouts? A. On Tenth Street, Newark, a piston ring company.

Q. Factory work? A. On a lathe, factory work.

Q. Did you go in the Army? A. I didn't go in the Army until 1917.

Q. Did you stay on this one job until you went in the Army? A. No, sir.

Q. Where else did you go? A. I quit there and I got a job on the Daily News-Record (1003) in Chicago. My cousin was an advertising manager; I went out with him and was with his family for about a year and a half.

Q. Doing what kind of work? A. Writing little items for this Daily News-Record and promoting sales for mens-wear for the Fairchild company.

Q. In Chicago? A. Yes, sir.

Q. What did you do after you left the Chicago job? A. I was home-sick. I came home and got a job with General Electric Company in Harrison as assistant cashier making up payrolls.

Q. How long did you stay with General Electric? A. I believe about six or eight months, probably a year.

Q. Where did you go then A. The war was on then and I joined the Army.

Q. In what year—how old were you? A. 1917. I was not quite 17 years old.

Q. How long did you stay in the Army? A. About 20 months.

Q. Were you discharged? A. Honorably discharged.

Q. Then after you came out of the Army, what did you do? A. After I came out of the Army I worked in the Hollander Company, Brooklyn, fur factory.

(1004) Q. In Brooklyn? A. Yes, sir.

Q. In the Brooklyn factory? A. Yes, sir.

Q. Rutkin, did you ever go into Reinfeld's office in the Browne Vintners Company and with your hands in your pockets menacingly like this (illustrating) threaten Reinfeld that unless he gave you $100,000 you would kill him in three days? A. No, sir.

Q. Did you ever make that threat to him any place, anywhere? A. No, sir.

Q. Did you ever visit Reinfeld in his office in the Browne Vintners Company and threaten him that unless he gave you $150,000 you would do him violence? A. No, sir.

Q. Did you ever visit Reinfeld's apartment in the Pierre Hotel in New York City? A. Yes, sir.

Q. Did you at the Reinfeld apartment in the Pierre Hotel in New York draw a gun? A. No, sir.

Q. Did you ever draw a gun on Reinfeld in the Pierre apartment or any other place and threaten him that unless he gave you $200,000 you would kill him? A. No, sir.

(1005) Did you at Lou Holtz' house in Newark threaten Reinfeld that unless he gave you $500,000—unless he gave you money, you would kill him and his family? A. No, sir.

(1006) Q. Did you ever call Lou Holtz and tell him that if anything happened to Joe Reinfeld, meaning if Reinfeld should die, that you would hold Reinfeld's family responsible for paying you money and that if they didn't you would kill the whole family? A. No, sir.

Q. Now then, some time after you got out of the Army, did you start in the bootlegging business? A. Yes, sir.

Q. And where did you start, in Newark? A. In Newark, New Jersey.

Q. And were you in business alone? A. Yes, sir.

Q. And did you have any equipment? A. No, sir.

Q. No boats? A. No, sir.

Q. At that time did you know Reinfeld? A. Yes, sir.

Q. Did you know what his business was then? A. Yes, sir.

Q. What was his business? A. He was a big boat operator with a different big combine, in Newark.

Q. How long had you known Reinfeld? (1007) A. Since, I would say, 1922, '21 or '22.

Q. Now, did there come a time when you joined up with Reinfeld's combination in the bootlegging business? A. Yes, sir.

Q. Can you tell us about when that was? A. About, I believe, the latter part of 1927; some time, I would say, in 1927.

Q. And how did that come about, that you joined forces with Reinfeld? A. Joe, Mr. Reinfeld, came to see me and he told me his brother Sam Reinfeld was going to see Si Seidenberg. Si Seidenberg owns Bernie's Restaurant here on Greene Street.

Q. You mean he owns it now. A. That's right. And he said Sam—he is going to see him and I would like you to go in with us, and do what you can. We have a big company and you won't work so hard and you will make more money". I didn't accept it.

Q. Now, did Reinfeld tell you what, if anything, you had that he wanted? A. Yes, sir.

Q. What was it? A. I had outlets. They had no difficulty bringing in liquor but they didn't have the outlets to sell it. I did.

Q. And did Reinfeld discuss that with you? A. Several times.

(1008) Q. All right. Now, you say at this first conference, when Reinfeld told you about his brother seeing

Seidenberg and so forth you didn't agree at that conference to go in with him. A. No, sir.

Q. Then did you have another conference? A. Two or three more.

Q. And what was the substance of the conversation that took place at these other conferences? A. He asked me—I said "Did Si agree to go in"? He told me no. He asked me to talk to Si, and I did—Si and I were good friends, we went to school together. He said—what I can recall of it—that he was in association, in a small way, with a couple of friends of his here and he didn't want to join a big combine, he would rather be alone. I said, "Well, that's the way I feel".

Q. That was your conversation with Seidenberg? A. That's right.

Mr. Tyne: I ask that that be stricken, if the court please.

The Court: I'll let it stand.

Q. What was your conversation with Reinfeld? A. I told Reinfeld that, what Si had told me.

Q. You told that to Reinfeld. Yes. Well then, what did Reinfeld say? (1009) A. He said, "Why don't you come in and try it for awhile"? Well, I asked him how much it would cost. He said they had—I said "What have you got?" He told me about numerous boats—

Q. Please keep your voice up. A. He had numerous boats; he had them listed on a piece of paper, how many they had, what type, different types—off short boats and in shore for going in shore trucks and leased garages, some were permanent—with holes dug in the cellar, which cost a lot of money, made out of concrete; they were called hideaways for stuff they couldn't sell and they had it just planted away. He said he could sell me the same share that he has for $75,000 and included in that would be, I

believe, about six or seven hundred thousand dollars in cash and outstanding moneys that they would guarantee to be good.

(1010) You mean this cash and outstanding monies belonged to the combination, then? A. That's right.

Q. They were among the assets? A. That's right.

Q. You said six or seven hundred thousand dollars? A. Yes, sir, in cash and assets, liquid assets.

Q. All right. Now, did you continue your conversations along that line?

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Q. And did you do business with him on that basis? A. Yes, sir.

Q. And you paid him the 60? A. Yes, sir.

Q. Now, you said there were a lot of different people in it. Did Reinfeld tell you who was in the combine at that time? A. Yes, sir.

(1011) Q. And whom did he tell you were his partners? A. I knew who they were.

Q. Well, did you discuss with him who they were? A. That's right.

Q. And who were they? A. There was Callahan—from down that way there was Callahan, Coste, Phil White, Arnould, Julius Magyar and a couple of Ben something, around Perth Amboy. A couple of more, boat captains, had very minor pieces, maybe a half percent and one percent, and so on, and there was Ben Harrington.

Q. Boat captains, so we don't have any misunderstanding, you don't mean Coast Guard captains, you are talking about the captains that ran the bootleg boats? A. That ran the whiskey in. Then there was Ben Harrington, and he had a couple of small shareholders with him. He lived in Carteret. Then there was the Reinfeld family, there was Joe, Solly, Sam, his two brother-in-laws, Lou Susskind and Lou Holtz, and he had a couple of other

relatives with him; I don't know if they had shares or were just on salary. Besides that, there was Kanengiser, Facher, Lentz, Marty Schneider, and Marty had a fellow with him called Hans who ran the business for him. He was a very small shareholder. And that's about all. There may have been two or three more.

(1012) Q. Now, you knew all of these fellows to a certain extent before you went in with Reinfeld, did you not? A. Yes, sir.

Q. Did you talk business about getting in the combine with any one except Reinfeld? A. Yes, sir.

Q. Who? A. Sam Reinfeld and I were always very friendly, and Lou Holtz, they said, "Jim, why don't you come with us, we have been friendly so long it would be a happy association", and so on.

Q. That was actually before you went in? A. That's right.

Q. Any others did you talk about this business with? A. I may have, just casually.

Q. I see. A. We were all very friendly.

Q. Now, then, after you got in did you have an active part assigned to you in the combine? A. Yes, sir.

Q. And what did you do? A. Well, there were only about two specific jobs that anybody didn't do, everybody done more or less the same. One man was Joe Reinfeld's brother-in-law, who was a radio operator, he had charge of the radio, with a code book.

(1013) Q. A what? A. A code book.

Q. Code book. A. (Continuing.) That had a code on it, code writing. He had a specialized job.

Q. What was his name? A. Lou Susskind.

Q. Susskind? A. Yes, sir.

Q. You mean by that that he operated a radio? A. Yes, sir.

Q. And for what purpose would they run that radio? A. To keep in touch with the offshore boats.

Q. And where was the radio located, on shore? A. On shore, yes.

Q. Whereabouts, do you know? A. Generally down the seashore.

Q. I see. All right. Now, I interrupted you, you say there were about two that had special jobs, I think you said one was Susskind; was there someone else? A. Well, Joe Reinfeld did most all of the paying off.

Q. Paying off, what paying off do you mean? A. Well, so we could get by wherever we went.

Q. Tell us in plain words what you mean by that. I think I know what you mean, but I want the jury to be sure. (1014) A. Well, Joe said he had a lot of official connections so we wouldn't be hampered in bringing in the liquor.

The Court: Did you have any official connections?

The Witness: No, sir.

The Court: How long were you in the bootleg game alone before you joined with them?

The Witness: I would say about four years.

The Court: And in that four years you didn't need official connections to run your illegitimate business?

The Witness: Your Honor, truthfully, I am going to tell you, I was stopped a few times by policemen going from Newark to New York City, and all they wanted was a couple of bottles of good liquor.

Q. Was there any fund for this purpose, for this pay-off purpose? Was there any money taken from the combine for that purpose? A. They just took it out and just charged it as an expense, and that was all there was to it. Nobody questioned Joe Reinfeld, he was the chief.

Q. Now, then, you told us about what a couple of special duties were. Now, what general duties did you engage in for the combination? A. Well, I rented garages, locations for garages, got in quiet neighborhoods so there wouldn't be too many people around, and I had a truckman—his name was George Catino, (1015) Catino Brothers, and they knew all about where to bring the liquor; they were always down at the docks with me, they just asked me No. 1 garage or No. 2 garage or 3 garage, and so on, and I assigned my quota to my garages; other people assigned their quotas to their garages. Some stayed in Perth Amboy, Carteret, some went right to Newark and New York.

Q. Did I understand that these garages were used for storage purposes? A. Yes, sir.

Q. And by that do you mean when the liquor would come in on the docks from the boats, it would be taken from the docks to the garages? A. Yes, sir.

Q. And then subsequently would be taken out from there and sold? A. Sorted in the garage, because they didn't have time to do that at the docks. They would bring it to a garage and sort it out.

Q. Sort, did you say? A. Sort the brands out. Some would be brandy and some champagne and some Scotch and some Rye. It was sorted out in the garages.

Q. I see. Would you be on the docks when the boats came in? A. Yes, sir.

(1016) Q. Well, what would Reinfeld do when the boats came in? A. The same as I did.

Q. Would he be on the docks, too? A. Yes, sir, all of us.

Q. And you gave orders to truckmen, or truck drivers? A. Yes, sir.

Q. Did you ever see Reinfeld giving orders? A. Always.

Q. Now, did you sell some liquor, also? A. Yes, sir.

Q. Did you do any buying? A. No, sir.

Q. Who did the buying? A. Joe Reinfeld.

Q. Where did he do most of the buying? A. From Seagrams in Canada.

Q. Now, did you ever go to Canada with him? A. Many times.

Q. And whereabouts in Canada did you go with him? A. Montreal; Seagram Building on Piel Street.

Q. And would that be the Seagram offices? A. Yes, sir.

Q. And is that where you bought a lot of liquor? A. Yes, sir.

Q. Did you go out to St. Pierre with him? (1017) A. No, sir.

Q. You knew about St. Pierre? A. Oh, yes.

Q. You say you went many times with him to Canada? A. Yes, sir.

Q. Now, how long did you keep on acting this way in the combine? As long as it lasted? A. Until it lasted.

Q. And as long as it lasted, were you busy at it all the time, and were you working all the time? A. Yes, sir.

Q. Doing this same kind of work that you have described to us? A. Yes, sir.

Q. And that was a full time job, was it? A. Yes, sir

Q. And a good deal of it was at night? A. Yes.

Q. Now, did you take a trip to Europe with Joe Reinfeld? A. Yes, sir.

Q. What year was that? A. I don't know if we made two trips or not, but one specific year was 1932.

Q. 1932? A. Yes, sir.

(1018) Q. And who else went with you on that trip to Europe? A. Eddy Seaman; a brother-in-law, Lou Holtz, and his brother-in-law Lou Susskind.

Q. And who first suggested the trip to Europe, Mr. Rutkin? (1019) A. Well, we were discussing a year prior

to that about going over and we felt that—we anticipated, rather, repeal of prohibition and we decided a long time in advance to go over and try for foreign agencies.

Q. What do you mean by foreign agencies? A. Well, for example, we were in London. We went to Distillers of England office, Eddie Seaman, Joe and I. Lou Holtz and Susskind went to Poland where Mr. Holtz comes from.

Q. Who made the tour? A. Lou Holtz and Susskind.

Q. You and Seaman and Reinfeld stayed in London? A. For quite awhile.

Q. Now, whom did you see in London, I mean in a business way? A. In the Seagram office we had a few meetings with Lord Dewar, the Chairman of Dewars, and Mr. Harrison who was Chairman of Black and White. Thomas Hurd, who was Chairman of the Board of the entire Distillers of England Company. I don't know if Tom Ball, he used to be with White Horse later, I don't think he was there at the time. We were aiming mainly for Black and White. We went over for that specific stock. We thought that was going to be the best seller, but at the end of this meeting Sir Arthur Dewar was there too, and at the conclusion of several meetings Tom (1020) Hurd said, "Well, boys," he referred to us all as boys, "I will tell you this. I don't know that you will have repeal or not as you feel you will, but if you do we have had several discussions amongst ourselves, you will be the only ones in America that were in the liquor business during prohibition that we will give an agency to in America, but we will not promise you Black & White. We will promise you one of the big five."

Q. Who were the big five? A. The big five was all controlled by Distillers of England. They controlled about 95% of the Scotch of the world and the big five is Dewars, White Horse, Black & White, Haig & Haig and Johnnie Walker.

Q. Well, was that the way the arrangement was left with these people when you left them in London? A. Yes, and when them people tell you something it is as good as a bond.

Q. Now, did you talk with anybody else in Europe about agencies? A. Yes, sir. With Mr. Cointreau, Cointreau Cordials.

Q. Where was he located, in London? A. No, sir, Paris.

Q. And what was the substance of your conversation with him? A. I don't recall that. Joe and Eddie spent some time with him. (1021) I was—I believe I made a trip right then somewhere down to Rheims to go through the Piper Heidsick Champagne factory which we acquired the agency for that.

Q. Before we get to that you did meet Cointreau with Reinfeld and with Seaman? A. Yes, sir.

Q. Now, go ahead to the Piper Heidsick matter. A. We went through the Piper Heidsick cellars. They have the roads down under the ground with pushcarts—women run them and they have the bottles upside down and the fellow explained how they made the champagne, how they crushed the grapes and afterwards put it into the barrels and vats and then they put it in the bottles and so on.

Q. Where is that place located, do you recall? A. I believe in Rheims, France.

Q. Now, were Seaman and Reinfeld with you down there? A. Yes, later.

Q. You went down first alone? A. Yes, sir.

Q. Now, did you make any arrangements with the Piper Heidsick people about an agency? A. We acquired that agency, yes, sir.

Q. When were these agencies to become effective? A. When and if Repeal.

Q. By the way, whose name were the agencies taken in? (1022) A. I believe in the Knickerbocker Company.

Q. Do you know what the Knickerbocker Company was? A. It was just a holding company.

Q. Well when had that been started, do you know? When did you people get control of it? A. Well, it was formed—I believe Eddie Seaman is the one made up the Knickerbocker Company, one or both. I left that to them.

Q. Now then, did you go any other place after Piper Heidsick? A. Yes, sir.

Q. Whereabouts? A. We spoke to an agent by the name of Queen. He was head of the Remy-Martin Brandy Company.

Q. Where are they located, in France? A. In France. They were at that time, I think, the biggest—only from hearsay—the biggest brandy manufacturers and distillers in the world, but they did not bottle brandy; they sold it to people like Hennessy and Martel and other independent brandy people—they put it out under a trade name and they would supply them for a blend but we got Mr. Queen to bottle Remy-Martin brandy for us and that was the first time, I believe, it come to America.

(1023) Q. Then I take it that you got an agency from him, is that it? A. Yes, sir.

Q. And that agency provided that he would bottle it, is that it? A. Yes, sir.

Q. And send it to you? A. Yes, sir.

Q. Was that also conditioned upon repeal? A. Yes, sir.

Q. Now, did you do business with any other people abroad? A. Yes, sir.

Q. Who else? A. We got some in Germany and Hamburg and Berlin, we got some distilled wines, that were not profitable, so I don't remember them very well; we gave them up; there wasn't much profit in them, they spoiled very quickly, would get cloudy and so on.

Q. You say you gave them up. When did you give them up? A. After we formed the Browne Vintners, about a year afterwards or so.

Q. Well, did all of these agencies that you have talked about, Remy-Martin, Piper Heidsick, and one from the distillers in London, did they all finally come into Browne Vintners? (1024) A. Yes, sir.

Q. Now, does that cover all, practically, of your business activities in Europe, that you recall? A. Yes. We tried to acquire several other agencies. We couldn't get them.

Q. How long were you over there? A. On that trip we were over there about five or six weeks.

Q. And were you and Reinfeld and Seaman doing the discussing for your people at all of these meetings? A. Yes, sir.

Q. And then did you all come back? A. Yes, sir.

Q. Now, while you were over there—prohibition was still in effect, so the bootlegging activities— A. It was in 1932.

Q. The bootlegging activities— A. It wasn't over until 1933.

Q. Yes. And while you were there the bootlegging activities were still going on? A. Yes, sir.

Q. Was there any liquor bought on that trip to be sent over then, during prohibition? A. No, sir.

Q. Now, when you came back did you resume your place in the combine? Did you continue, I mean, in the combine? (1025) A. Oh, yes, we kept right on going.

Q. You kept right on going? A. Yes. We took a summer vacation, we didn't work very much, none of us, at any time, any of the years, in the summer time.

Q. Why was that? A. Well, it was too—there wasn't enough darkness, mainly, and there were too many people on beaches and waterfronts and so on, and we generally suspended for 3½ or 4 months.

Q. Well— A. And that was the time we were over there.

Q. How did the fact that there were too many people on the beaches interfere with you? How did that interfere

with you? A. Well, we were just violating the law and so—

Q. You mean it wasn't so easy to bring it in on boats, is that it? A. Yes, it was easy to bring it in. I just wouldn't know how to define that. We just didn't work in the summertime very much.

Q. All right.

The Court: Because of the chance of discovery because there were so many people around?

The Witness: Yes, sir, I believe so.

Q. Now, your bootlegging kept right on to the end of prohibition, is that it? (1026) A. Yes, sir.

Q. Do you recall when Browne Vintners was formed? A. Yes, sir.

Q. Now, at the time the combine broke up, the bootlegging combine broke up, Mr. Rutkin, was there any discussion as to how everybody stood, percentagewise, financially and so forth? A. Yes, sir.

Q. And out of that discussion how did you understand—

Mr. Tyne: Of course, I object to it unless the time is fixed and unless the facts and circumstances relating to this, whatever, it is, are pointed out. It calls for a mere conclusion.

The Witness: Yes, I think you must particularize the situation, Mr. Van Riper.

Q. Well, when you went in, you said you had 6 percent? A. Yes, sir.

Q. Did it ever change? A. Yes, sir.

Q. What did it change to? A. 27½ percent.

Q. How did that come about? A. It came about in 1929. I told Joe I was quitting and I told him why. I asked him if he wanted to go in with me alone. I didn't want to be in with any more big combines. (1027) I just wanted

to be freer, go to the movies when I wanted and do what I wanted.

Mr. Tyne: I can't hear that. Will you repeat it.

A. (Continuing) I wanted to be freer for myself.

The Court: He wanted to go to the movies when he wanted to.

Is that what you said?

The Witness: Yes, sir; not have so many meetings.

A. (Continuing) So I had what I would call a patent of my own and he agreed to go in with me on it fifty-fifty, aside from the combination.

Q. What was the patent? A. We took a boat, I believe it was about 110 foot, and we had tanks put in that were copper lined and zinc lined boats, to see which would stand the whiskey best, because iron turns whiskey—

The Court: Not which your stomach would stand best?

A. (Continuing) Iron turns whiskey black, your Honor, and copper and zinc doesn't have an effect on it. And we pulled in about 200 yards, I would say, maybe less than that, a hundred yards, off Deal, New Jersey, and anchored, and Lou Holtz and I would go out with a little boat, pull in a hose, we would have ropes attached to the boat, to the little dinky we were on—we attached a hose that was rubber covered on the outside and linen lined on the inside. (1028) We pumped into oak vats in three houses connecting into it 20,000 Canadian gallons of whiskey, which was equivalent to 25,000 gallons of American whiskey. Canadian whiskey has 5 quarts to a gallon.

Q. You mean by that you had the vats in the houses offshore and you pumped it from a ship offshore right into

the vats in the houses, is that right? A. Yes, sir. And that was much simpler than bringing little barrels—we used to bring in 14-gallon barrels, we bought the barrels here; we didn't have so much work; it saved a lot of work and it was very efficient.

Q. Now, was that an enterprise that you and Reinfeld were in? A. Yes, sir.

Q. How many of these boats did you have? Did you have more than one? A. Two.

Q. You had two of those boats? A. Yes, sir.

Q. All right. Now we were talking about your—

The Court: That was in Deal?

The Witness: Pardon?

The Court: That was in Deal, New Jersey?

The Witness: Yes, your Honor.

The Court: Did you have to get protection there?

(1029) The Witness: No, sir. If you would like me to explain that, your Honor, I could, and you could readily see why we wouldn't need it.

The Court: It would be amusing.

The Witness: Well, if you want to be amused, I will amuse you, your Honor.

Q. All right, go ahead, tell us about it. A. There was a little—we had the top floor in an ocean-front house and we had a red lamp there. The boat coming in would have no lights and it would generally be, have to be, on a rough night when the Coast Guard would tie up, be too rough for them out there in their small boats, 35 or 45-footers, whatever they have. This boat would glide in towards that landmark, the red light. In the wintertime, that would be the only light. They would know where they were at.

That was towards Deal by that Long Branch bridge; that was always lit up. And Lou Holtz and I, we would be out there in this little boat and the rest of the company would look for us with binoculars and they would drop anchor maybe 100 yards back and glide and they would come to a stop. We would give them our line and they would pull it ashore from land. Then they would hook it up on the boat and pump it in. When it got pumped in, we had about a dozen automobiles with, oh, probably 200-gallon tanks in them, copper-lined and zinc-lined tanks, just looked like ordinary (1030) passenger cars. They would bring it from there up to a garage and put it in barrels.

The Court: And the Deal police weren't wise to them at all?

The Witness: No, sir.

Q. Well, they were busy patroling the rest of the town, I suppose? A. I don't know.

Mr. Tyne: Well, of course—were you there?

The Court: All right, all right.

Q. Was Reinfeld a part of that operation? A. Yes, sir.

Q. All right. Now, then, you started to tell us about the percentagewise. Then did your percentage come down again later on in the combine? A. Yes, sir.

The Court: Well, let me ask you, was this arrangement with Reinfeld separate from the combine?

The Witness: The first one was, the first one.

The Court: I mean the Deal one.

The Witness: Yes, sir.

The Court: That was separate—

The Witness: The first one, we had fifty-fifty; we wanted to see what it was.

The Court: But you kept your interest in the combine (1031) at the same time?

The Witness: Yes, sir. Then Joe and I had a long conversation and he said, "What's the use of quitting and leaving everybody on the lurch?" and we agreed between Joe and I that I would keep 27½ percent of the whole company, the entire company, because I didn't need anybody to operate that except the workingmen; I could sell the goods, I had the outlets.

Q. Now, when you talk about the whole company, are you talking about this patented boat business? A. Yes, sir.

Q. But outside of that, in the other combine, your six percent stayed the same, did it? A. Yes, sir.

The Court: Well, I thought you were in fifty-fifty with Reinfeld, in this boat deal.

The Witness: On the one boat deal, to see how it worked.

The Court: Well, what was the 27 percent? Where did you have that?

The Witness: We started fifty-fifty.

The Court: Yes.

The Witness: And Joe Reinfeld came to me and said, "Jim, what's the use of us working fifty-fifty?" He said, "We'll keep—you keep the major part, you are entitled to (1031A) that, it is your patent, it is your invention," and we really moncpolized the entire United States with that, nobody could compete with us. The price dropped from $30 to $6 a gallon. It was 110-proof whiskey we generally brought in. And he said, "Suppose you keep 27½ percent of the whole business."

The Court: Well, what whole business? In the combine?

The Witness: We put in—

The Court: You mean the combine?

The Witness: Yes, sir. We put in the bulk whiskey business, we threw that right into the combine.

Q. Now, then, at the time that the combine broke up, was there money left in the combine? A. Yes, sir.

Q. And do you know about how much money in dollars there was left in the combine? A. Yes, sir.

Q. About how much? A. Well, there was about—

Mr. Tyne: I object to it, unless he shows the basis of his knowledge. We haven't been shown any approach—

The Court: Well, how do you know it, Mr. Rutkin? How do you know it?

The Witness: I recall it was close to half a million (1032) dollars.

The Court: How do you recall?

The Witness: Well, we spoke—Joe Reinfeld and I spoke about it, as to what we would do with the money.

The Court: And you agreed—

The Witness: We decided—

The Court: You agreed there was almost half a million dollars there?

The Witness: Yes, sir.

The Court: Well, who had that money?

The Witness: Joe Reinfeld.

The Court: Didn't this other lad at the vault have any of it, who used to give out a hundred thousand dollars, fifty thousand, ten thousand dollars? Didn't he have any of it?

The Witness: Your Honor, I think he and the other fellow were very, very confused.

Mr. Tyne: Oh, now, I object to that and ask that it be stricken out.

The Court: Well, did he have any of it, that you know of?

The Witness: Only when he collected it on checks that he deposited in banks. That's the only way he got it. And when he got it, they either turned it over to Reinfeld or sent it to Canada and all he kept was sundry monies.

(1033) The Court: Well, do you call a hundred thousand sundry?

The Witness: No, sir. If he didn't send that to Canada, he would turn that over to Reinfeld. Reinfeld always had all monies, properties, under his possession, him and his family.

The Court: All right.

The Witness: They would remain probably with 15 or 20 thousand. I would call that sundry money.

Q. All right. You had this conversation with Reinfeld and your recollection is that you had about a half million dollars on hand? A. Yes, sir.

Q. Now, was there an understanding as to what was to be done with that half million dollars? A. Yes, sir.

Q. Well, what was to be done with that? A. We put that into Browne Vintners Company.

Q. Now, do you know how the money was put into the Browne Vintners Company? Do you know how the Browne Vintners was started?

Mr. Tyne: If your Honor please, for the sake of clarity, can't we have this witness fix the time when this 500,000, half million, or whatever it was—

The Court: Well, he said, at the end of prohibition, (1034) at the time the combine broke up, in the conversation with Reinfeld, they agreed they

had nearly a half million dollars and that was to be used for the establishment of Browne Vintners.

Mr. Tyne: Yes. Well, can't we have the year fixed?

The Court: When was that?

The Witness: Early in '34.

Mr. Tyne: When the combine broke up? Is that what I understand it to be.

The Witness: The combine wasn't entirely liquidated at that time. It broke up but we still had some assets on hand.

The Court: When was the Browne Vintners formed?

The Witness: Early in '34.

Q. Now, had there been talk about Browne Vintners before it was actually formed? A. Yes, sir.

Q. And by formed, I should say I mean the time it started in business. You had nothing to do with the drawing of the papers, did you? A. No, sir.

Q. The forming of the corporation? A. No, sir.

Q. Do you recall when it started in business? A. Yes, sir.

Q. Now, there had been talk about that beforehand, had there (1035) not? A. Yes, sir.

Q. Among you and Reinfeld and the rest of them? A. Yes, sir.

Q. There was talk about that when you were in Europe in '32, wasn't there? A. He spoke—

Mr. Tyne: Of course, I object to these leading questions.

Mr. Van Riper: Well, the witness has said so.

The Court: It is simply rephrasing what has already been testified to. Go ahead.

Q. Now, do you know where the Browne Vintners came from, how it came to be Browne Vintners? A. Yes, sir.

Q. How? A. A gentleman by the name of, I believe it was, E. T. Browne, was in the drug business in New York City. He was from Bloomfield, New Jersey, I think, originally; and Eddy Seaman got acquainted with him. That's how he came in. He was given a piece of the top or front, to be president of the company, and call it Browne Vintners, after him.

Q. You say for a front. Who was to be the front? A. Browne.

Q. Why did they need Browne for a front? (1036) A. Well, everybody was more or less panicky that they would lose their license for being bootleggers or being in trouble at some time or other.

Q. Do you know what business Browne had been in? A. Wholesale drug business.

Q. Wholesale drug business. Now, then, do you know how the money got into Browne Vintners Company? A. Yes, sir.

Q. How did it get in? A. Through a good friend of Sonny Levin,—Renfield now.

Q. That's Reinfeld's son-in-law? A. Yes; whose name used to be Levin.

Q. And who was this good friend? A. Mr. Bowers.

Q. Where was he located? A. In Canada.

Q. Did you personally know Bowers? A. No, sir.

Q. Who told you about Bowers? A. Joe Reinfeld.

Q. And did you make any inquiry from— A. Joe told me, "Don't worry; he is a friend of Sonny's."

Q. Were you told that the money went to Bowers? A. Yes, sir.

(1037) Q. Now, did you know who owned the stock in the corporation? A Well, they revised it; may—

Q. Wait a minute. A. No, sir.

Q. I withdraw that question. Did you know whose name the stock was in? A. No, sir.

Q. I don't mean the people who had an interest; I mean the people on the record, who showed up, after the money went to Canada. A. Well, they revised that a few times.

Q. Do you know whose name they started out with, as owning the stock at the start? A. Well, I know, but I just can't think right now, offhand.

Q. I see. Do you know what partners stayed in Browne Vintners, what partners of the combine stayed in Browne Vintners? A. Yes, sir.

Q. Who? A. I believe everybody stayed in except Magyar. I met him and he told me he don't want no part of that business. And Ben something—he had a percent—in Perth Amboy; not Ben Harrington.

The Court: One of these boat captains?

The Witness: Yes, a couple of those. They didn't want to be in an illegitimate business.

(1038) Q. They didn't want to be in an illegitimate business? A. No.

Q. Did you stay in? A. Yes, sir.

Q. Now, did you have any stock of record in your name? A. No, sir.

Q. How was your stock interest being handled? A. Joe Reinfeld handled it—

Mr. Tyne: If it was being handled.

The Witness: Pardon?

The Court: Well, he said it was, before. Go ahead.

Q. How was it being handled? A. Joe Reinfeld had some stock. He handled it for me.

Q. Did Reinfeld have a conversation with you about it? A. Oh, yes.

Q. Or did you have a conversation with him? A. We had many conversations about it.

Q. And what did Reinfeld tell you about the handling of your stock, as to how it was being handled?

Mr. Tyne: When and where? I don't want to be asking these questions. Counsel is an experienced examiner.

The Court: Give him a chance to bring it out.

Q. All right, Mr. Rutkin. A. We talked about it many times, not particularly that there was no trust between Joe and I—we never had a word. (1039) I used to visit him quite often at his home on Vassar Avenue and at the Essex House and we would go out very often. Once or twice we would casually mention it. There was no question of trust or mistrust and I wasn't too concerned about it. It was only that he just said, "Don't worry about it. I have got it." That was enough.

The Court: Now, about when were those conversations?

The Witness: Well, we had one when he sent the money to Canada. I was concerned about that. He said, "I am sending it to Canada."

The Court: Do you recall when that was, about?

The Witness: That was probably early in '34 or late '33.

Q. All right. Then did you have other conversations after that? A. Yes, sir.

Q. Now, did you know whether other partners had stock in their name or not? A. Well, I know of a few.

Q. Well, did you know some partners who didn't have stock in their names? A. Yes, sir.

Q. By the way, you haven't mentioned Zwillman and Stacher yet. Were they a part—

The Court: He mentioned Stacher. He didn't mention (1040) Zwillman.

Mr. Van Riper: I beg your pardon?

The Court: He mentioned Stacher but he didn't mention Zwillman yet.

Mr. Van Riper: I am sorry. I thought it was Stacher he omitted, if your Honor please.

Q. Was Zwillman a part of the combination? A. I remember very distinctly when they came in as partners with us. It was in the year 1930.

Q. 1930. Now, who came in that time? A. We had a conference with Zwillman, Eddy Seaman and a fellow by the name of Herman Eisenberg, from Florida. They were the three representatives, partners, and that was down at 1060 Broad Street, and we agreed to go in, except for one item to just take approximate values of boats and trucks and so on and cut down general expense by having one operation instead of two, and when you would come in to certain docks one time, you couldn't use it again for two months, and there would be a question who would get there first.

(1041) The Court: Well, was Zwillman and Stacher in the bootlegging business previous to joining with you?

The Witness: Yes, sir.

The Court: They had their own—

The Witness: Their own combine.

The Court: —organization.

The Witness: They come in with us in 1930.

The Court: Previous to that they had been operating?

The Witness: By themselves.

The Court: (Continuing) Their own combination?

The Witness: Their own combination, yes, sir.

Q. All right, go ahead. A. That is fresh in my memory because at that meeting we agreed—Joe was there, Louis Holtz was there and myself, a couple of more from our side, Kanengiser, and I don't remember, a couple of more, and Joe said, "You tell him about it, I told Joe to tell him about it, now you tell him." So I told him, well, every thing except one way we had to bringing in bulk liquor, and it is my personal patent, you can't know how it comes in, you can't help us, you would only spoil it by talking about it. If you want to trust us, all right. So they said they would. And as I remember distinctly, we pumped the whole first 25,000 gallons in the ocean, a hose broke and we didn't know it.

(1042) Q. Now, then, they came in and of course they were a part of it?

The Court: Sort of a Deal high ball down there.

Mr. Van Riper: Maybe that is where that originated, your Honor.

Q. Now then, did that effect your percentage in the combine, when they came in? A. Yes, sir.

Q. It cut it down? A. Cut it in half.

Q. All right. Now, then, getting back to Browne Vintners, you say that you knew there was some partners who had stock of record and some who didn't have stock of record? A. Yes, sir.

Q. Is that right? Did you know whether Zwillman had stock of record or not? A. I did know that he didn't.

Q. He didn't. Do you know whether Stacher had stock of record? A. I do know that he didn't.

Q. Did not. Do you know in whose names their stock was being held? A. No, sir.

Q. But you know they had an interest? A. Oh yes.

(1043) Q. Now, when Browne Vintners was first started, that is, when they first started in business they had an office in New York, did they not? A. Yes; they changed about three times, and finally wound up at the International Building in Radio City.

Q. But they had their offices always in New York? A. Yes.

Q. I see. Now, who was the directing head of Browne Vintners? A. Joe Reinfeld.

Q. And were you associated with Browne Vintners? A. Yes, sir.

Q. And what contact did you have with Browne Vintners? A. Well, I can state it this way: There were a number of outlets that I know of, and Zwillman and Stacher knew that Reinfeld knew nothing about, he was only interested in buying and picking pieces up, I guess. For example, there was the Old Gold distributing Company in Chicago and the Gold Seal Distributing Company. The Gold Seal is a fellow by the name of Joe Fusco, Old Gold is Nat Goldberg and a fellow by the name of Jake Bronsky. They were old bootleggers and they are probably the biggest wholesalers in Illinois. Well, they looked up the books, National Distillers, for example, would look up their books and say, "Well, these fellows are racketeers," and wouldn't give (1044) them any credit; if they did, very, very little. Whereas we gave them unlimited credit, we would send them carloads of White Horse. That is, in '34 and '35 and early '36, we didn't have Wilson until '36. Well, as a result they were loaded up with 2,000 cases of White Horse or a thousand cases of White Horse and 40 or 50 cases of some other stuff. Well, they had to push it, if you were a cafe owner and wanted to buy ten cases of

Scotch you got nine cases of White Horse and one case of the other, so as far as a saloonkeeper was concerned you had to be a good salesman and push it out. So that all over the country it was that way because, I would say, seven out of ten of the wholesalers of today, with the exception of McKesson & Robbins, and one of the heads of that that has passed away, was in the bootlegging business; not Mr. Murray, Mr. Murray never was. He is the president. We pushed it so much on trucks all over the country, we knew them people were good and they always paid, either they couldn't show the money or didn't want to show the money, but we knew they were reliable and the first six years of Repeal, it might have been five years, I think six, White Horse was the biggest seller in America. We wound up with White Horse, it was the biggest seller in America. Reinfeld himself, went back to London and he took a great big bonus, "Mr. Reinfeld, you did a great job."

(1045) Q. Now, then, you say "we pushed it," did you take part in that pushing of White Horse? A. Yes, sir, very much so.

Q. And did you make contacts with these people, like the names you have just given us of these people in Chicago? A. Yes, sir.

Q. And other parts of the country? A. Yes, sir.

Q. And was that contact for the purpose of pushing White Horse? A. Yes, sir.

Q. Now, did Reinfeld know you were doing that? A. Of course, yes, sir.

Q. And would you consult with Reinfeld about it? A. Yes, sir.

Q. And where did you consult with Reinfeld about it? A. Well at the offices, or we would go out. We went out quite frequently. We would confide all the time. There was nobody any closer than us two.

Q. And were you and Reinfeld close socially all during this time? A. The closest friend I ever had and I don't ever want a friend that close again.

Q. And when you went to the offices did you have any difficulty seeing Reinfeld? (1046) A. No, I used it the same as it was my own; if Joe wasn't there I just walked right in. I looked in, the secretary wouldn't say nothing to me, and sometimes she would say, "He is in there with so and so," and I wouldn't want to go in or butt in, and sometimes he was there with somebody and he would say, "Come on in."

Q. Now, who were some of the other people who were located in the offices of Browne Vintners? By "the other people" I mean the company executives? A. Well, there was Jack Arme, who was the president in name only for awhile, he came from McKesson & Robbins and quit and went back with McKesson & Robbins; and there was a Mr. Newman, who was there quite awhile; Babe White was there quite awhile. Let's see, Babe White was not in the Customs, you said he was in the Customs, he was not.

Q. I am sorry, you correct me, then; what was he? A. Babe White worked for the Government and he was in a foreign secret service for many years with Frank Buck.

Q. What was his part in Browne Vintners? A. Well, Babe was a very fine and honorable man and I don't believe Babe did anything wrong in fronting the stock. I don't think he ever would do anything wrong because he is a fellow about six foot six—

The Court: Well, did he front for stock?

The Witness: Yes, sir.

(1047) The Court: For people who had records?

The Witness: I don't believe he knew that; I believe he just recognized Joe Reinfeld. But Babe White and I were very friendly and that is how I

know he was out with Frank Buck. "All over," he says, "there isn't much we don't know about Asia." He is a very interesting man.

Q. All right. Now, did Lentz have an office there? A. Yes, sir.

Q. What was his capacity, do you know? A. Executive vice-president in charge of sales.

Q. This is Samuel Lentz? A. Samuel Lentz.

Q. Were any of the Reinfeld brothers over there, outside of Joe? A. No, sir.

Q. Was Lou Holtz over there? A. No, sir.

Q. Joe Davis there? A. Yes, sir.

Q. What was his responsibility over—what were his responsibilities, do you know? A. Well, Joe, in name, was secretary, but Joe complained not only to me, to a lot of people, that is, people in the company, he said, "I am a fine secretary, I don't know what is going on."

(1048) Q. Do you know what kind of work he did do? A. Yes, I went to Boston with Joe Davis, I went to—somewhere in the middle west, we made a trip together. But in the New England States we went to Boston and Hartford and places. We had a tough job with Wilson to crash, Schenley Red Label at that time had the complete control of the market, nobody could crash, Calvert or anybody. Then we spent quite a little time up there. Then I went up with Lentz. We had a fellow named Pete Timello, he was the New England States' manager.

Q. Was he located at Boston? A. At Boston. He is up there now; he works for Hiram Walker.

Q. What were you doing in the New England States with Davis and with Lentz? A. Well, I have some friends up there, Joe Lensky, he owns one of the large wholesalers up there; I know a fellow Izzy Ord, he has got four big, big, I mean large, cafes that would accommodate 600 to

800 people. Joe Reinfeld knows him well through me. I know him many, many years. And he would just get his bartenders and let me take care of them to keep pushing Wilson, push White Horse. And no matter what anybody asked, the instructions are, generally in a place where you have a friend, if someone asks for a specific drink, give them what they ask for, but if they (1049) just say, "Give me a rye highball," all right, give them rye, or bourbon. No matter what they ask for not by name, if they ask for a rye give them Wilson's and if they ask for Scotch, not by name, give them White Horse.

Q. Now, would you meet the bartenders, and so forth, and talk this way with them? A. Oh, yes, I would; mostly with permission of the owners.

Q. That was your job, was it? That is the kind of work you were doing? A. Part of the time.

Q. And did you call that promotion work? A. Yes sir.

Q. By the way, you talked about New England, did you know Benny Gaines in Boston? A. Yes, sir.

Q. And what place did he run? A. Mayfair Restaurant.

Q. And do you remember taking Joe Reinfeld in there once? A. Oh, we were there several times.

Q. Reinfeld? A. Yes.

Q. Did he know Gaines before he went there with you, do you know? A. No I introduced them.

Q. You introduced him? (1050) A. Yes, sir.

Q. Now, how did you introduce him? Who did you say he was? A. I said he was my partner, I said this is the owner.

Q. And did you and Joe talk to Ben Gaines about your White Horse and some other of your products? A. No, we didn't have to because Ben Gaines was a pretty good friend of mine through his brother and I knew him before that, and besides, Ben had a very good friend up there

also, Joe Lindsey and his associates, a Dave Laffy was with that company—I just can't think of the name of it—and he pushed that product, anyway. But he pushed it especially hard, you know.

Q. All right. Now, do you recall a time in connection with Browne Vintners when you were in California and Joe Reinfeld was in California? A. Yes, sir.

Q. How did you come to contact one another out there? A. I went to California to see my brother.

Q. Did he live there? A. (Continuing) Who is in a wholesale electrical supply business out there.

Q. Wholesale? A. Wholesale electrical supply business. And we were friendly with the Lyman brothers, Abe Lyman, the bandleader, (1051) and Mike Lyman and Billie Lyman. So George Wood, he is the head of William Morris, theatrical agency, in New York City, they handle a lot of all big talent in the country, like Eddie Cantor, I guess Fred Allen, and so on. He called me and said, "I spoke to Joe Reinfeld," I believe he was in Lyman's when he called—

Mr. Tyne: I object to any conversation.

Q. Don't tell us about any conversation. You got a call from whom? A. Wood.

Q. Then as a result of this call what did you do? A. I called Encinato, Mexico; Joe Reinfeld was there with his wife.

Q. I see. And did you talk with Joe? A. Yes, sir.

Q. And what did you say, and what did he say? A. Joe said, "I just heard you were on the coast yesterday," he said, "I will be leaving here in five days or a week." He said, "Why don't you stay there if you intend to go back before I wish you wouldn't do it, and come back with us by train." So I waited. I was going home, anyway.

He came back in about a week and we went home, his wife, himself and myself.

Q. The three of you came back by train? A. Yes, sir.

(1052) Q. Now, can you tell us about what year that was? A. I believe it was in 1937.

Q. All right. Now, did you stop over in Chicago? A. Yes, sir.

Q. And before you got to Chicago did you and Joe talk about Browne Vintners business? A. No, sir, just generally, nothing about stopping in Chicago.

Q. Well, when you stopped in Chicago, then, did you talk specifically about Chicago and Browne Vintners? A. Well, we stopped at the Congress Hotel and we didn't go right up to the office; Joe called up Martin Lasky, the manager, and he came over and we had dinner together, the four of us, and we were then talking about Wilson going to be started in the middle west, Illinois, Wisconsin, Indiana and like that, and that was going to be maybe in three or four weeks. You have to have a campaign ahead of time, you have to get it lined up. In other words, what I mean by lined up, you have got to have a lot of missionary men to have placements in cafes, otherwise your advertising is wasted because if they go in a cafe and ask for a drink and don't get it, it is just wasted. So you get placements, first. And in order to get the placements, as a rule, saloonkeepers and tavern owners, and restaurants, they are not looking for new whiskey, (1053) They are looking for customers, they don't want whiskey. So in order to get placements, especially, and to get them to put your bottle on the bar—or two bottles, if possible, one on each side—you have to make some kind of a private deal, a kick-back. For example, if the whiskey costs at that time about $24 a case, he pays $24 and you give him about two or three dollars a case back to pocket for his kick-back. He

would put it on the bar and buy a good quantity of cases, and when he had it there was nothing to do but push it and sell it. Then we would start advertising, when we got enough placements.

Q. All right. Now, did you and Joe and Lasky talk about this while you were in Chicago? A. Yes, sir.

(1054) Q. And did Joe make any suggestion to you as to what you should do about that market out there? A. He asked me if I would do him a personal favor and spend a month or two out there with Lasky because "after all Lasky got $125, something like that a week, he is limited, you know what to do better than he does in regard to getting placements and you have got some friends there, places where he couldn't get in, like the Standard Club of Chicago"—that's the most exclusive place in the country, I guess. My cousin was one of the big men there. He was getting $100,000 a year from Kuppenheimer Clothes—

Mr. Tyne: I ask that that be stricken.

Mr. Van Riper: Never mind.

Q. All right. Then did you tell Joe that you would go on in Chicago? A. I told him I would spend a month or two there. He said "Set yourself up on the payroll so it will look good and draw what you want from the expenses." So I said "I don't know what I will need." He said "Don't spend the whole company, you can spend but not the whole company."

Q. Was anything said about getting a regular salary? A. I put myself on for $300 which was about what it cost for me to eat at the Medina Club.

Q. You said you put yourself on. Do I understand that was the (1055) entire amount you drew?

The Court: He said it was about what it cost for him to eat at the Club.

A. It cost me that much to live.

Q. What I want to know is whether you were on the payroll at $300 or did you have any expense account for that? A. Some weeks I spent as much as $2000, some weeks $3000.

Q. What was the $300? Was that a regular salary? A. That was my personal salary.

Q. How did you get your regular salary check, where did that come from? A. The salary checks come right from there. $297 a week plus Social Security.

Q. You say "right from there." You mean the Chicago office or the New York office? A. I am not certain.

The Court: What was the $2000 or $3000 a week for?

The Witness: Well, I spent quite a little money out there, your Honor. For example there was a place called Joe's—

The Court: You mean pushing the whiskeys?

The Witness: Yes.

Q. That is an expensive thing? (1056) A. Yes. To break in a whiskey is like breaking in a cigarette. They give cigarettes away; they do everything in the world to get it on the market and I still don't see how you could bring in another cigarette or another whiskey today.

Q. Did Reinfeld direct Lasky to take you on and give you a job? A. He asked me to stay there with Lasky for a month or so.

Q. Did he tell Lasky that you would stay there? A. No, he asked me in front of Lasky. I said I would, Lasky said "I am happy, it will take off me."

Q. At that time Lentz was Vice-President in charge of sales? A. Yes.

Q. Did you have to get Lentz' consent before going on there? A. No, sir.

Q. Mr. Bennett was Vice-President in charge of promotion. Did you get Bennett's permission before you went on there? A. No, sir, he was just an employee.

Q. But he was Vice-President in charge of promotion? A. Yes, sir. He had a title; that was all.

The Court: Well, were you an officer?

The Witness: No, sir.

(1057) The Court: What were you?

The Witness: I was a partner, but I couldn't show as a partner because of the New York State Liquor Authority; it would revoke the license.

The Court: Well, what I mean, you say Reinfeld was the person who ran things generally at the start?

The Witness: Yes, sir, that's right.

The Court: What were you?

The Witness: I was like his chief assistant and we were so close and friendly even we consulted all the time about things not pertaining to the business—social.

The Court: So far as the Browne Vintners are concerned, you are assistant to—

The Witness: Joe wouldn't make a real big move, a drastic move in anything without taking it up with me. We were that close.

The Court: You were practically assistant to him in the general control?

The Witness: Yes, but I couldn't act in any official capacity on the books.

The Court: You could?

The Witness: I could not.

The Court: He could.

(1058) The Witness: Well, some things he could straighten out for himself but not for me. I don't know. I can understand why now but at that time I couldn't see why.

Q. At that time who was president of the company? A. Well, we had various presidents, Jack Owen, Joe Noonan—I don't know if Dave White was there for a while and they couldn't permit—Joe went to Washington to see somebody and come back and said "They finally agreed to let me be an officer but not president of Browne Vintners."

Q. What officer did he become? A. Nothing. Nothing that I ever knew, nothing on the door even, just his office. But nobody could do anything in any department without an o.k. from Joe Reinfeld's office.

Q. Now, how long did you stay on the Chicago job? A. I got enthused in it; I just made up my mind,—you see you get around and get into trouble and getting the whiskey around and I stayed on to finish it up and get as many places as I could. For example, there was a place called Joe's. I believe it is still there, on the south side comparable to Lindy's Restaurant in New York. Lindy never took in any blended whiskey until very, very late in the '30s, only bonded whiskey, and this Joe's was the type of place like that. He didn't take in nothing but bonded whiskey, but he was a nut on cheesecake and a cheesecake factory they had on the side.

(1059) The Court: What do you mean, actual cheesecake or pictures of girls coming back from Europe?

The Witness: Actual cheesecake.

A. (Continuing) And I made a deal one night with him. "I will never handle a blend" and the owner of the Chez Paree in Chicago, a gentleman about 75 took me down in person. He said you must put this in for my good friend Jim. He said, "I will do anything for you but not that" but after a few times, oh, it might take me a month, I bought a few hundred cheesecakes and sent them around the country. I sent 50 to Gallagher's in New York, 50 to

California—I just sent them around but he took in a like amount of Wilson whiskey that he promised me he would not sell only over his bar and he put a few bottles on his bar. Well, that was kind of an expensive proposition about $1,200, but it was worth it.

Q. Now, is that generally the kind of work you were doing in Chicago? A. Yes, sir.

Q. How long did you say you stayed there? A. Could have been six or seven or eight months.

Q. And were you doing this kind of work all during that time? A. Yes, sir. I got a few signs, outdoor signs for the company that last year he would have to get all kinds (1060) of official red tape from New York in the advertising department and so on. Well, I cut that red tape, got those outdoor signs and so forth, made it a little quicker.

Q. Now, when you were living in Chicago—you were living in Chicago you said—you were living in some club? A. Yes, sir.

Q. Were you in touch with Reinfeld in New York? A. Yes, sir.

Q. How did you communicate with him? A. Well, I blew in about every two or three weeks to see my family.

Q. In the meantime would you have telephonic communication with him? A. No, unless there was something special to take up.

Q. When you came in on these visits, oh, every two or three weeks, would you discuss what was going on in Chicago, what you were doing? A. Yes, he said "How are you getting along?" I said all right, I will get there, it will be on the market, it may cost a little expense, but it will be on the market.

Q. Was there ever any complaint from Reinfeld as to how expensive it was out there? A. No, sir. He was very happy to have me there.

James Rutkin—Defendant—Direct

Q. Now, what happened when that culminated out there, when that terminated? (1061) A. When that terminated, I went to Boston from there, to help Lentz out.

Q. To help Lentz out?

The Court: I think with the termination of the Chicago episode, we will recess until ten minutes before two. The jury will be excused first.

(Noon recess.)

(1063) (The Jury returned to the court room.)

The Court: All right, will you take the stand, Mr. Rtukin?

Continuation of direct examination by Mr. Van Riper:

The Court: I think we had just finished with the Chicago episode and we were about to go to Boston.

Mr. Van Riper: To enter Boston, yes, sir.

Q. Now, Mr. Rutkin, my question either was or it was about to be—

The Court: Or will be now.

Mr. Van Riper: Yes, was about to be, and not having been, it will be now—

Q. What kind of work did you do in Boston with Mr. Lentz? (1064) A. We figured different ways out to make an inroad up there on Wilson. White Horse was doing pretty good. And we couldn't make an inroad with Wilson, and we got some outdoor advertising signs and did business in the general way which I explained before of pushing whiskey.

Q. And did you make any inroads with it? A. Yes, sir.

Q. And did you work only in Boston or did you work in other parts of New England? A. All throughout New England.

Q. Now, while you were doing that did Reinfeld know what you were doing? A. Oh, yes.

Q. And were you in communication with him from time to time? A. No, sir; only when I went back, I just—

Q. I mean when you came back to New York. A. Yes. I told him, explained in general what I had done.

The Court: No standees, please.

(1065) Q. All right. Now, then, after that did you go any other place for Browne Vintners, particularly? A. Well, Milwaukee—well, I explained that, it takes care in the Chicago area; Florida.

Q. Where did you go in Florida for Browne Vintners? A. Well, namely around Miami, to a friend, Charles O'Neil, who owned the South Florida Company. He is a very good friend of mine and he had outlines at that time; he has Hiram Walker lines now. And he did a very, very good job, Charlie.

Q. Did you promote with him? A. Yes, sir.

Q. (Continuing) In Florida? A. Yes, sir.

Q. Now, did you promote White Horse or any other products of Browne Vintners in or about New York City? A. All their products, but we specialized on the one.

Q. Yes. But did you do that specializing in or about New York City? A. Yes, sir.

Q. And who were some of the people that you contacted, or some of the places that you contacted in New York City? A. Well, like the speakeasy days, you know, go back there and—

Q. Now, let's have this straight. You are not speaking of (1066) speakeasies, you are talking about after prohibition, with Browne Vintners. A. Well, I see. Well,

the Stork Club, Gallagher's, Dinty Moore's, Toots Shor's, Jack Dempsey's; the Riviera was considered metropolitan New York, although it was in New Jersey; it was a good outlet. There were some spots considered key spots in the whiskey trade. You don't care about making money at those key spots, because they have people from all over the country there.

The Court: They led eclat to your trade?

The Witness: Thank you, your Honor. Thank you; that is correct.

Q. That is something the trade sorely needed. Do you know a man by the name of Chrisenberry? A. Bob Chrisenberry, yes, sir.

Q. Who was he? A. President of the Hotel Astor.

Q. Did you ever do any business with him? A. Yes, sir; very good friend of mine.

Q. For Browne Vintners? A. Yes, sir.

Q. Now, Mr. Rutkin, did there come a time when you got an interest in a hotel in Florida? A. Yes, sir.

Q. And about when was that, do you know? (1067) A. That was 1936.

Q. And with whom did you acquire that interest? Who were your partners or partner? A. Well, at first it was Jack Dempsey and Joe Reinfeld.

Q. Did Reinfeld have an interest in the hotel? A. Yes, sir.

Q. And then afterwards did you get other partners? A. Well, afterward, we took that more of a key spot, I didn't want that place. May I tell you how that come about?

Q. Well, if it ties in with Reinfeld, you may tell us, yes. A. That's right, it does.

Q. All right. A. Reinfeld and I were talking over about outlets, retail outlets, and when we saw Johnson's

name all yer the country, about 200 key cities and selling popular whiskey for—a city like St. Louis was a 10-cent whiskey town, Buffalo, New York, the same, about 20 cents, New York—but the further west you would go except when you hit toward California whiskey was cheap, cheaper than the east, and we figured, that is, I showed Joe, and I had Jack Dempsey's consent that we organize units of about four at a time—take about two or three years to get a couple hundred saloons, either to build them or acquire small cafes and change the front and so on—make it into a sporting place with fight pictures and so on and have some newspaper (1068) man or sporting man to be manager, we would have a big consumption all over the country. Well, during that time Dempsey and his business manager, Waxman, showed me a letter that they had received from the Phipps Estate. They had a block—I think they still have it—on 15th Boulevard, Miami City, from 13th to 14th Street, and the Phipps Estate—

Mr. Tyne: I understand this was all with Joe Reinfeld?

The Witness: Yes, sir.

A. (Continuing) They wanted to build a building on there for $150,000, if we would furnish it with equipment for not less than $50,000. Well, I got a friend of mine, an architect, Tom Lamb, who was one of the designers of Radio City Music Hall, he went down with me and he designed something different that would cost about $250,000 or thereabouts with their relatives from all over the country, the Phipps Estate, and after giving that up, we turned into the Dempsey Hotel. They wanted a key spot and I got discouraged with that and as a result of that discouragement there, I gave up the other thing with the chain of cafes and we lost—Joe and I lost $20,000 apiece in Florida.

Q. Now, wait a minute. I think we are getting a little ahead of the story. How did you get into the Vanderbilt-

Dempsey Hotel? What was the contact made in the first place to get in that? (1069) A. Jules Ender made the arrangement with, I cannot think of his name, a bank that owned the hotel.

Q. All right. With the owner of the hotel? A. Yes, sir. And he made the lease, I believe it was a 10 or 15-year lease, as I recall.

Q. Now, did you discuss the proposition of the Vanderbilt-Dempsey Hotel with Reinfeld? A. Oh, yes.

Q. And as a result of your discussion with Reinfeld, what did you and Reinfeld agree to do about the Vanderbilt-Dempsey Hotel? A. Jules figured it would cost $100,000, but he didn't have any money at the time but I wanted him to run the place. I was going to run organizing the cafes in various cities with Dempsey. He figured he could keep it down to 100,000, but we figured it would be safer to put 120,000 in because anything you plan on costs a little further.

Q. You say "we." Who do you mean by we? A. Joe and I.

Q. So what did you do about it, you and Joe? A. Joe gave me the $120,000 and I went down there.

Q. Now, will you tell us the circumstances under which you got that $120,000? Who did you get it from? Did Joe hand it to you himself? A. No, sir.

(1070) Q. Who handed it to you? A. Sam Cohen. I had an appointment in the Browne Vintners' office the following day after I spoke to him. I told him I would be there around one or two and I have got a four o'clock plane reservation; when I got there, Joe wasn't in his office but somebody there told me that Cohen wants to see me—he was in Joe's office and he said, "Jim, you got to stop this kind of business with Joe."

Q. This is Cohen? A. Yes.

Mr. Tyne: I object to any conversation with Cohen. Cohen is deceased. We have no way of producing him here.

Mr. Van Riper: Your Honor, it goes to this exhibit the Government has put in G—

The Court: I don't think I will allow any conversation you had with Cohen.

Q. Well, you had a conversation with Cohen? A. Yes, sir.

Q In Reinfeld's office? A. Yes, sir.

Q. Did you get any money from Cohen? A. Yes, sir.

Q. How much did you get? A. $120,000.

Q. In cash? (1071) Yes, sir.

Q. What did that represent? In other words, was that a loan to you?

Mr. Tyne: Oh, now, wait a minute; I object to counsel putting words into his mouth.

The Court: Let him tell the story himself.

A. Half was mine and half was his.

The Court: Half was yours and half was whose?

The Witness: Joe Reinfeld.

Q. Half was yours in what sense? Had it been yours before that day?

Mr. Tyne: Now, if the Court please—

The Court: Let him explain what it was; don't be suggesting answers, Mr. Van Riper.

Q. In what sense was half of it yours? A. Well, it was my money.

Q. Why was it your money? A. Because I had it up.

Q. But why were you getting $60,000 from Cohen? A. Well, he had a statement for me, he said, here—sign this.

Sign this and let me have it. So starting in doing everything to make him happy, I signed it. When I returned the money—

Q. When you returned the money what—I show you this paper marked G-3 in evidence and ask you if that is what you signed at that time. (1072) A. Yes, sir.

The Court: Is that what you signed to make Cohen happy?

The Witness: Well, we never signed papers before that.

The Court: No, but you said you signed it to make him happy.

The Witness: Yes, sir, I was never asked for a signature before. Everything was by word. I took his word for everything and he had never had reason to disbelieve me.

Q. What did you understand you were signing? A. A receipt for the money.

Mr. Tyne: Wait a minute; it speaks for itself.

The Court: I sustain the objection.

Q. Now, had you talked with Reinfeld before that day about the $120,000? A. Yes, sir.

(1073) Q. And what was that $120,000 to represent? A. Equipping the place for restaurant, cafe—

Q. No, that was what you were going to do with it. A. Yes, sir.

Q. You were going to use it for that purpose, I take it. A. Yes, sir.

Q. But what did the $120,000 represent? A. The partnership.

Q. Well, how much was Reinfeld putting in the partnership? A. $60,000.

Q. And how much were you putting in the partnership? A. 60,000.

Q. And where were you getting your 60,000 from to put in? A. From the company.

Q. From the company or from Reinfeld?

Mr. Tyne: Now, if the court please, there counsel goes again, trying to put words in this witness' mouth.

The Court: Well, he can say, from the company, or from Reinfeld.

A. Joe Reinfeld laid out the $120,000.

Q. Yes; all right. Did you have any responsibility to Joe Reinfeld for any of that money? A. I owed him 60,000.

Mr. Tyne: I object to that.

(1074) The Court: Let's hear what he has to say about it.

Mr. Van Riper: Will you read the answer, please?

A. (Repeated by the reporter.)

Q. You mean that after you got the 120,000 from Cohen— A. I owed 60,000.

Q. —you owed 60 of it to Joe, is that right? A. Yes, sir.

Q. Now, did you go to Florida with the money? A. Yes, sir.

Q. And did you use it? A. Yes, sir.

Q. Where did you use it down there? A. In the hotel and cafe.

Q. Now then, who was running the hotel, after you took it over? A. I had a manager by the name of Mr. Carey that I employed. He worked for the Fifth Avenue Hotel. That was the first manager.

Q. Fifth Avenue Hotel, New York? A. Yes, sir.

Q. Well, did you have a full staff running it? A. Yes, sir. He employed the staff.

(1075) Q. I beg your pardon? A. He employed most of the staff. I employed a few key men.

Q. Was Mr. Sam Cohen down there? A. Yes, sir.

Q. What did he do? A. He came down with George Goldstein, his chief assistant. He introduced me to him and he said he was going to get George started and they were going to set up the books and stay there until they got the books set up, and they got how all the money was laid out and spent.

Q. Well, did they set up the books? A. Yes, sir.

Q. And did they stay there for awhile? A. Yes, sir.

Q. And you said something about, "and how all the money was laid out," just tell us what you mean by that, Mr. Rutkin? A. Well, the landlord got—I don't remember the amount—for the lease down.

Q. Yes. A. And then in the middle of the season, which was—

Q. Mr. Rutkin, excuse me. I don't know that we are particularly concerned about who got how much, at this (1076) moment; I am not, at least, anyhow. With what did Cohen and Goldstein, his assistant, do, with reference to the laying out of this money? A. Well, all the bills that came in, they paid it.

Q. They paid it? A. And kept track of it.

Q. Did they have control of the money? A. Yes, sir.

Q. And did bills go to them? A. Yes, sir.

The Court: Didn't you get the money? Didn't you get the money?

The Witness: Yes, sir.

The Court: Did you give it back to Goldstein and to Cohen?

The Witness: Yes, sir, whatever was left, when they got there.

The Court: Whatever was left after what?

The Witness: Well, when I got down there, the landlord got the first piece of money, I have forgotten the amount, it might have been 30 or 50,000, and whatever was left was turned over to them.

Mr. Tyne: I didn't get that.

(1077) The Court: Thirty or fifty thousand. And the rest was turned over to—?

The Witness: To George Cohen.

The Court: For the equipping and running of the hotel?

The Witness: Yes, sir.

Q. Who made the arrangements for Cohen and Goldstein to come down to the hotel? A. Joe Reinfeld.

Q. At that time was Cohen the accountant for Browne Vintners? A. Yes, sir.

(1078) Q. Now, then, you kept your interest in the hotel in Florida for about how long? A. Probably a year.

Q. And then did you sell it? A. Yes, sir.

Q. To whom? A. Ben Gaines.

Q. And before you sold it did you have some conversation with Ben Gaines? A. Yes, sir.

Q. And at one of those conversations was Reinfeld present? A. Yes, sir.

Q. And where did that conversation take place? A. Browne Vintners' office.

Q. What was the conversation between you and Reinfeld and Ben Gaines, all three of you being together?

Mr. Tyne: May we have the time fixed, if the court please?

Q. Do you know about the time?

Mr. Tyne: I want to know where we are. We are just going on here. We don't know—

The Court: We know pretty well where we are, it was the time they were discussing selling the thing which he got out of the year after he joined. Go ahead.

(1079) Q. Just tell us the conversation, Mr. Rutkin. A. Ben Gaines—

Q. Was Reinfeld there? A. No.

Q. All right. You and Ben Gaines had a conversation, first? A. Right, yes.

Q. Then did Reinfeld come into the conversation? A. No, I called him.

Q. You called him? A. Yes, sir.

Q. Did he come in? A. Yes, sir. I told him first what it was, and I explained it to him.

Q. And you went out and had a conversation with Reinfeld? A. Right, yes, sir.

Q. What did you tell him, when you had a conversation with Reinfeld? A. "Joe, I was talking with Ben Gaines," he got 50% at that time in my Miami Hotel, it was very seasonable, it is an all-year resort now. They used to open in November and close in April, end of April, and the opening and closing cost a lot of money with the window sashes, all wood-work—storm windows and all that. He said, "I would like to buy (1080) the other half and put all my money—devote all my time down there and sell my Mayflower Restaurant." And he said, "Figure out a price." I don't know the amount I told him we would lose, we would agree to lose. I went out and told Joe, "What do you think? Come on in, this fellow ~~hasn't~~ got the money right away." I wanted him to know. And he told Joe the story, and he did, and Joe said to me, "Whatever you do is okay."

Q. So as a result of that did you make a deal with Gaines? A. Made a deal and sold it.

Q You sold your interest? A. Yes, sir.

Q. How much did you ultimately get from Gaines from the sale of the interest in the Vanderbilt-Dempsey? A. I would say approximately 60,000.

Q. Now, then when you sold the interest which you say you and Reinfeld had in the Vanderbilt-Dempsey to Gaines, did that include everything? A. Except the cash on hand and deposits with the phone company and electric company and so forth. He returned that. And cash on hand.

Q. And where was the cash on hand, in the bank? A. In the bank and in the hotel safe.

Q. Yes. Now, how much, if anything, did you get from (1081) that cash on hand? A. Approximately 20,000.

Q. Now, did that mean that you got that from your 120,000 investment, 80,000? A. Yes, sir.

Q. Now, how did you and Reinfeld handle that? A. I gave Joe, from time to time—Gaines didn't pay me all at once and I was short 20,000 to what I owed him, and I gave Joe the money a short time after the place was sold.

Q. Now, you say you were short 20,000 to what you owed him; you owed him 60,000, didn't you? A. Yes, sir.

Q. Does that mean that you gave him 40,000?

Mr. Tyne: Now, if the court please—

Mr. Van Riper: Well, it is a simple matter of arithmetic.

Mr. Tyne: I object to it, let the witness testify and not counsel.

The Court: I know, but when it is a perfectly patent thing like twenty from sixty leaves forty, we can speed the witness's mathematical computation.

Q. You owed him sixty, didn't you? A. Yes, sir.

(1082) Q. And you paid him back, short 20,000, as you put it? A. Yes, sir.

Q. That's right. Now, then, did you ever pay him the other 20,000 that you owed him? A. Yes, sir.

Q. Now, then—

The Court: When did you pay him that?

The Witness: Oh, I would put it at several months later.

Q. Now, then, did Gaines get, in addition to what he got from you for repayment of your loan—did Reinfeld get back 40,000 of his 60,000 investment? A. Yes, sir.

Q. And what was the other 20,000, the loss? A. Loss.

Q. Now, Mr. Rutkin, you remember the time when Browne Vintners was sold in 1940? A. Yes, sir.

Q. Do you remember it was sold to Seagram's? A. Yes, sir.

Q. Now, shortly before—before it was sold was there a meeting at the Park Central Hotel in Harry Davis' apartment? A. Yes, sir.

Q. Do you know how that meeting was arranged, who arranged (1083) for the meeting? A. Yes, sir.

Q. Who did? A. I believe Joe arranged the meeting.

Q. Well, who told you about the meeting? A. Joe.

Q. And did you tell anyone else about the meeting? A. Yes, sir.

Q. Who did you tell? A. I asked, at Joe Reinfeld's request, Joe Davis, his brother Harry and Lou Pokrass, to have them come up to the hotel.

Q. Now, did you go to the meeting? A. Yes, sir.

Q. And in whose apartment was it at the Park Central? A. Harry Davis'.

Q. Harry Davis'? A. Harry Davis'.

Q. And who was at the meeting? A. The two Davises, Zwillman, Stacher, Reinfeld and myself.

Q. Pokrass was not there? A. No, sir.

Q. Now, did you go from the offices to the hotel with anyone? (1084) A. Joe Reinfeld.

Q. And on the way did you have any conversation with him? A. Yes, sir.

Q. And what was that conversation? A. He asked me what do I think about selling; I told him I thought it was a big mistake to sell, especially one thing I couldn't understand about, he was offered more money from Schenley, which he had told me, but all in stock, and that was to be wholly a cash transaction. And I believe I told him—yes, I did—Billy Rose had called me up and I said, "Joe, Billy Rose called me up and he spoke to Bernard Baruch, and he asked me what I thought—he had a list of whiskies—what I thought of him buying that bulk whiskey." I said, "I don't know. What makes you want to go in the whiskey business on a bulk scale?"

"Well," he said, "it is a help against inflation on account of war coming on." I said; "I don't think we ought to sell." So to that Joe replied, "Jim, the heat is on too much, Dewey has got men after me." He said, "You delivered me to the Criminal Courts Building, to the door, you didn't go in with me, fortunately you didn't have to, you weren't under subpoena, but it is coming closer and closer, he had the books for a couple of years," and he said —I know he went down, to my own knowledge, at least a half (1085) dozen or more times and he said, "I am getting worried, we better get rid of it." He said, "You might as well go along." There was nothing else I could do about it.

Q. All right. Now, that was on your way from Browne Vintners' office to the hotel? A. To the hotel.

Q. Now, when you got to the hotel you went to Harry Davis' apartment, right? A. Yes, sir.

Q. And were all of these people, the two Davises, Zwillman and Stacher there? A. Yes, sir.

Q. Now, then, what did Reinfeld say, in effect? What was the substance of what Reinfeld said when you got to the meeting? A. He told the boys the story why he would like to sell and why he is going to sell. He said, "If anybody here has any objections, state them now." Well, nobody had any rejections, what's the use of stating them, he had control over it, anyway, and could do what he wanted.

The Court: Well, you were a pal, weren't you? If you had any objection why didn't you say it then?

The Witness: Because I didn't want to object, I wasn't sure. Joe said the pressure was on him so that I (1086) couldn't be sure of that, that was only his view, and it was my thought that he shouldn't sell. It was only a matter of pure guesswork, I could be right or wrong, and so could he.

Q. Well, then, did he ask the people there, that is, you five people, whether or not you were willing to sell? A. Pardon me?

Q. Did he ask the five people, you, the two Davises, Stacher and Zwillman, whether or not you were willing to sell? A. Yes, sir.

Q. Did each one indicate that they were willing to sell? A. Yes, sir.

Q. All right. And that was the substance of what happened at this meeting? A. Yes, sir.

Q. And after that you were informed that the company had actually been sold, were you? A. Yes, sir.

Q. Did he tell you, either on the way down, or up, which ever it may have been, from Browne Vintners' office to the Park Central Hotel, or at the Park Central meeting what the price was to Seagram's? A. I knew what the price was long before that.

(1087) Q. You knew what the price was. From whom had you gotten that? A. From Sam Bronfman, Chairman of the Board of Seagram's, and from Joe and general conversation with Sam Cohen.

Q. Did you know Bronfman? A. Very well.

Q. You had talked with him about this proposition, had you? A. Several times, for a few years before that, I don't know why, but we were growing too fast to suit him, cutting into Calvert and, I don't know, I just had a hunch eventually he would wind up with it. Not in a dishonest way.

Mr. Tyne: I ask that that be stricken.

Q. Never mind.

Mr. Van Riper: Now, may I have my exhibit there, please? I guess this is it.

Q. Mr. Rutkin, I show you this paper marked D-9 in evidence and ask you if you have seen that before? A. (After examining.) Yes, sir.

Mr. Van Riper: Excuse me, if your Honor, please. If the court please, this is in evidence but the jury hasn't seen it and now, since this witness is referring to it, I am wondering if I may give photostatic copies to the jury.

(1088) The Court: How many have you?

Mr. Van Riper: Well, I only have two in my hand.

The Court: No, it takes too much time to pass it around to the Jurors; they will get it afterwards.

Mr. Van Riper: All right, sir.

Q. You say you did see it before? A. Yes, sir.

Q. And from whom did you receive it? A. Morris Kanengiser.

Q. And do you know about when you received it from Kanengiser? A. Well, it was shortly—

Q. Keep your voice up. A. Sometime between '34 and '36.

Q. Between '34 and '36. Now, when you received it from Kanengiser, did you have a conversation with Kanengiser about it? A. Yes, sir.

Q. Do you know whose handwriting that is on the side there in longhand? A. Yes, sir.

Q. And whose is that? A. Mr. Kanengiser's.

Q. Did you see him put it on? A. No, sir.

Q. Did he talk with you about it? A. Yes, sir.

Q. Now, then, after you left—did you take it away from Kanengiser? A. No, he gave me a slip.

Q. He gave it to you? A. Yes.

Q. And then did you ever discuss it with Reinfeld? A. Yes, sir.

Q. And what was your discussion with Reinfeld about this paper? A. I told him K had a little complaint to make—

Q. Wait a minute. How long after you got it from Kanengiser about, did you take it to— (1090) A. Either that day or the next day.

Q. All right. All right, go ahead. What did you say to Reinfeld about it? A. That K had a complaint, some kind of a complaint, that they had got a mistake in the figures.

Mr. Tyne: I object to any conversation.

The Court: This was K with Reinfeld.

Mr. Tyne: Oh, with Reinfeld.

The Court: Yes.

Mr. Tyne: I am sorry. I withdraw my objection.

Q. Now, will you start over again, please. What did you say to Reinfeld? A. I said K don't want to complain to you, something to that effect, but he has got a complaint about the figures, about something pertaining to 1½ percent. He said "Jim, do me a favor. Give it to Sam Cohen and let him straighten it out."

Q. And did you take it to Sam Cohen? A. Yes, sir.

Q. And did you have a conversation with Sam Cohen about it? A. Yes, sir.

Q. And what was your conversation with Sam Cohen?

Mr. Tyne: I object to it.

The Court: I shall sustain the objection.

Mr. Van Riper: If the Court please, I don't want to argue after the Court has ruled, but I call attention to the (1091) fact that Cohen was the accountant for the company.

The Court: He is dead.

Mr. Van Riper: All right. And Kanengiser said it came from him.

Q. Did you discuss these figures with Cohen? A. Yes, sir.

Q. Don't tell us what he said. I mean, did you discuss the figures that were on this sheet? A. Yes, sir.

Q. With Cohen? Now, Mr. Rutkin—

The Court: Did you discuss the figures on the sheet with Reinfeld at any time?

The Witness: I believe we did; yes, sir.

The Court: What was—

The Witness: I discussed that 1½ perrent.

The Court: Nothing else?

The Witness: Well, there was nothing else, more or less, discussed.

The Court: No, I mean I am asking you was there anything else discussed with Reinfeld about that sheet?

The Witness: No, sir.

The Court: Except the 1½ percent that K was disturbed about.

The Witness: Yes, sir.

The Court: All right.

(1092) Q. Now, I call your attention to the figures in the upper left-hand corner of that sheet opposite the word "Orig."—O-r-i-g—an abbreviation, $469,343.40. Do you know what that refers to? A. Yes, sir.

Q. What was that? A. The monies left over from the combine.

Q. From what? A. The combine.

The Court: That's the bootleg combine?

The Witness: Yes, sir.

Q. Which went where? A. To Browne Vintners.

Q. Now, were you advised some time later, that is, some time later—by that I mean after Browne Vintners got started—that there was going to be an increase in capitalization? A. Yes, sir.

Q. And were you advised to what amount the capitalization was to be raised? A. Yes, sir.

Q. To what amount?

The Court: Will you let me have that a moment?

Mr. Van Riper: Oh, certainly. I beg your pardon (handing photostatic copy to the Court).

A. I can make it faster for you. There was three times we put in. (1093) First the 469, then we raised it to a million, then we raised it to two million, two.

Q. All right. You had an original 469; after that you had two increases in capitalization, is that right? A. Yes, sir.

Q. Now—

The Court: Will you let me ask a question there? That o-r-i-g, 469,343.40, was as you say the money left over from the bootleg combination?

The Witness: Yes, sir.

The Court: Now that was increased to a million dollars, is that right?

The Witness: Yes, sir.

The Court: J. R. put in 265,000, is that it?

The Witness: Yes, sir.

The Court: Who was J. R.?

The Witness: Joe Reinfeld.

The Court: And A?

The Witness: Abe Zwillman.

The Court: He put in 217,000, and J. D.—

The Witness: Joe Davis.

The Court: —39,000?

The Witness: Yes, sir.

The Court: And M. L.?

The Witness: Marty Lehrhoff.

(1094) The Court: A little over 7,000.

The Witness: Yes, sir.

The Court: So that was additional money they put in?

The Witness: Yes, sir.

The Court: That makes a million dollars.

The Witness: Yes, sir.

The Court: All right.

Q. Now, his Honor has just called your attention to those figures and said that there was 265,000 in round figures opposite the initials J. R. and asked you who that was and you said Joe Reinfeld. A. Yes, sir.

Q. Now, do you know how the 265,000 that is there credited to Reinfeld was made up?

Mr. Tyne: I would like to know if the witness can tell of his own knowledge without looking at that paper.

Mr. Van Riper: Oh, now, if the Court please, I think the witness has a perfect right to look at the paper. It is in evidence.

The Court: Let him refresh his recollection.

The Witness: I just want to refresh my memory from it. That is all.

Q. Take all the time you want; look at the paper. A. (No answer).

Q. Well, let me ask you this question, Mr. Rutkin: at the (1095) time the capital was increased to a million dollars, did you make a contribution? A. Yes, sir.

Q. And do you recall—if you don't recall, can you refresh your memory by looking at this sheet, how much you contributed at that time? A. (No answer).

Q. Will you find your name on the sheet?

Mr. Tyne: Now, wait a minute. I would like to have the first question answered, if the Court please.

The Court: Go ahead, answer the question.

Q. Do you recall—if you can't recall of your own memory, can you refresh your memory by looking at the sheet, as to how much money you contributed at that time? A. I put in—I contributed an additional $31,839.39.

The Court: When was that?

The Witness: From looking at this sheet.

The Court: When was that?

The Witness: That was to make—

The Court: Do you have an independent recollectino of that now?

The Witness: I didn't remember the exact change.

The Court: But you remember it now?

The Witness: Yes, sir.

The Court: Where did you get it?

(1096) The Witness: When did I get it?

The Court: Where did you get it?

The Witness: I had it.

The Court: Was that money left over from the bootlegging deal?

The Witness: No, sir.

The Court: Well, you had to borrow 60,000 from Joe on this Dempsey deal. Where did you get this 31,000?

The Witness: I beg your pardon. I must have misunderstood you, your Honor. When you said was that left over from the bootleg deal, I thought you meant in regards to the 431,000. I did have that money left over.

The Court: From your profit—

The Witness: Yes, sir.

The Court: —in the bootleg days?

The Witness: Yes, sir.

The Court: And you had it at the time you borrowed the 60,000 from Reinfeld for the Dempsey deal?

The Witness: Yes, sir.

The Court: All right.

Q. You put in approximately 30,000 or 31,000 dollars, you say? A. Yes, sir.

Q. And do you know where that shows up in this million dollars, referring to this sheet? Do you know where your (1097) 31,000 is? A. Yes.

Q. Where is it? A. I had—of my $469,000, $28,160.61 was my share of that.

Q. Yes. A. And thirty-one thousand in the other, 839, 39, additional, that I put in, made it the 60,000.

Q. That gave you a total investment of how much? A. 60,000.

Q. $60,000? A. Yes, sir.

Q. Now, where did your $60,000 show up in these figures up in the left-hand corner that the Judge called your attention to? A. Included in Joe Reinfeld's.

Q. Yours is in Joe Reinfeld's? A. Yes, sir.

Q. All right. Now, then, have you had this paper since until you produced it to me recently? A. It was in my possession, yes.

Q. And were you asked in New York whether or not you had the paper? A. Yes, sir.

Q. Were you unable to find it when you were in New York? A. Yes, sir.

Q. Where did you subsequently find it? (1098) A. Well, I searched all over; I knew I had the papers, I explained it over there—I didn't know exactly what they were and I just looked and looked and now before this trial you had asked me, I believe, for my Army discharge and I hunted and hunted. I figured out it was too late to send for a copy of that to Washington, and while looking for that I found these two papers and I still didn't find the Army discharge.

Q. And you brought the papers to me? A. Yes, sir.

Mr. Van Riper: May I have those marked for identification, please?

(Marked D-11 for identification.)

Q. Mr. Rutkin, did you attend a meeting at Holtz' house in Newark on December, 1942? A. Yes, sir.

Q. How was that meeting arranged, do you know? A. Yes, sir.

Q. How was it arranged? A. Mr. Zwillman or Mr. Stacher, either one got hold of Joe Reinfeld and made the arrangement for the meeting.

Q. And how did you know about it? A. I spoke to Joe—I don't recall if I called him or he called me.

Q. It don't make any difference; you spoke to him? (1099) A. Yes, sir.

Q. And what did you speak to him about, this meeting? A. About the meeting.

Q. Did you go to the meeting? A. Yes, sir.

Q. And when you talked with Joe, was it understood between you that you were going to the meeting or wasn't it? A. Oh, yes.

Q. And when you got to the meeting, do you know whether it was a Saturday or Sunday? A. It was the first meeting; I don't know what day of the week.

The Court: How many meetings were held there?

The Witness: I believe there were three days of meetings.

The Court: Three different days?

The Witness: Yes, sir.

The Court: At Holtz's?

The Witness: At Holtz home.

The Court: Were the same people present at each time?

The Witness: No, sir.

The Court: I'm sorry to interrupt you; go ahead; take it from the first meeting.

Q. The first meeting you were asked who was present? (1110) A. The three Reinfelds, Holtz, Zwillman, Stacher, Sam Lentz and myself.

Q. Now, what was the discussion about? A. About—

The Court: Let me have those names. Zwillman—

The Witness: Stacher.

The Court: Holtz?

The Witness: Holtz, the three Reinfelds, myself, Samuel Lentz. Sam Cohen was there, Dave Popik was there, George Goldstein was there.

Q. You knew Popik? A. Very well.

Q. You knew him to be Reinfeld's lawyer? A. Yes.

Q. Now, what was the discussion about? A. Oh, about each discrepancy and Browne Vintner sales and settlements and so forth.

Q. Give us some of the details, will you? A. Well, one of them was that Joe Reinfeld had bought an awful lot of stock in the company. He didn't pay for it all and he bought it without letting anybody know that he bought it. The tax matter that he charged other people for taxes including me.

The Court: From whom did he buy this stock?

The Witness: There was just a transfer made —didn't buy .(1101) from anybody—just issued another capitalization.

The Court: No, you said he bought a lot of stock.

The Witness: Just issued more stock.

The Court: Issued more stock.

Q. Go ahead with the conversation that took place. A. There was a point on one of the things was the Cointreau brandy that we acquired in France wasn't assigned to Browne Vintners at any time but J. Reinfeld Company had owned it as the agent. That matter was brought up once, previously, a long time before and was brought up again. And there was the matter of liquor that he sold through Browne Vintners from J. Reinfeld Company, I think some-

body might have mentioned that, he also bought liquor from Browne Vintners Company back to J. Reinfeld Company and a few more things like that.

Q. Well, now, why were these things being discussed, what was the purpose of the meeting? A. Well, it was prefaced by—I can't talk about Sam Cohen—Joe Reinfeld gave me a statement; he come to me which very seldom he did in 1942 just prior to that and he said—

Q. Wait a minute. A. Pardon?

Q. I show you this paper marked Exhibit D-11 for identification and ask you if you have seen that paper before? A. Yes.

(1102) Q. And from whom did you get that paper? A. Joe Reinfeld.

Q. Is that the paper that you had in mind when you said that "Joe Reinfeld had given me a statement"? A. Yes, sir. He said Sam Cohen had made this up and when I looked at it, I got a little sick. "Sam Cohen made this up." I said fine.

Q. Just keep your voice up, please. Show it to the Judge. Let's go back over that. We couldn't all hear you back here. You said Reinfeld said, "Sam Cohen made this up." A. Yes.

Q. What did you say? A. I said, "Is that all." "Well, yes." So I don't see the St. Pierre, Miquelon piece on there. Three percent I was supposed to have all the while from St. Pierre. You got 18½%—how can you have 18½% and now tell me after all this while I got 3% right off the reel. And that St. Pierre was a company like a holding company with no assets. It would buy whiskey, say, from Seagrams, it was delivered from Seagrams in Montreal to St. Pierre, Miquelon; that holding company made, money, to wit, $2, $3, $5 a case, to the boat.

Mr. Tyne: Do I understand this to be a conversation?

Mr. Van Riper: I think he is telling us what (1103) the holding company was. Never mind about that.

Q. Never mind. You had some discussion with Reinfeld about this paper, did you? A. Yes, sir.

Q. You got the paper, as I understand it, before the meeting? A. Yes, sir.

Q. In Holtz' house? A. Yes, sir, two or three days before.

Q. And it was given to you by Reinfeld? A. Yes, sir.

Mr. Van Riper: I offer it in evidence, if your Honor please.

Mr. Tyne: I would like to look at it.

Mr. Van Riper: Well, look at it.

The Court: Did Reinfeld tell you what the statement was?

The Witness: Yes, sir.

The Court: What did he say?

The Witness: He said here is the balance of the money I got for you.

The Court: Any further conversation about that statement?

The Witness: Well, he had told me "Here is the statement for you. Sam Cohen prepared the statement."

(1104) The Court: A statement of what? I just want to find out

The Witness: The statement of monies that we had, you know, that I had coming.

The Court: Statement of your monies that were coming to you?

The Witness: From the Browne Vintners sale.

Mr. Tyne: May I ask the witness a few questions on this?

The Court: Well, I think it is of the nature of cross-examination. You may do it on cross-examination. He has identified it now as a statement which he says was given him by Reinfeld and that Reinfeld said it was a statement of monies due to him.

Mr. Tyne: Due to him at the time of the delivery of the paper?

The Court: Yes.

The Witness: Yes, sir.

Mr. Tyne: May I have the time fixed?

The Court: When did you get the statement, a couple of days before the Holtz meeting you said?

The Witness: Two or three days before.

The Court: Two or three days before. Mark it in evidence.

Mr. Tyne: May I reserve the right to strike it out (1105) if it doesn't prove to be material?

The Court: As I told you before, you don't have to reserve any right to strike out anything if the motion is properly based.

(Exhibit marked D-11 in evidence.)

Q. Now, Mr. Rutkin, calling your attention to this paper D-11 in evidence, and calling your attention to the last line which says "Remaining after deducting late division, $81,259.10." Now, what did Reinfeld say that amount was? A. That is what I have coming to me.

Q. He said that is coming to you? A. Yes, sir.

Mr. Tyne: May I see what amount you are referring to?

Mr. Van Riper: This last line. $81,259.10.

Q. Now, this paper shows advances for May, 1940, to December 4, 1942, different dates aggregating $55,000 in

one instance and $70,000 in the other. That is the total was $125,000. Did you receive that amount of money from Reinfeld for your interest in Browne Vintners? A. Yes, sir.

Q. That is before the $250,000? A. Pardon?

Q. Before you got the $250,000? A. Oh, yes, that's right. The 250 was in addition to that.

(1106) Q. Yes. Now, then, at the meeting in Holtz' house, the one that you have told us about, when the men were there whom you talked about, did you participate in that meeting concerning these liquor sales? A. No, sir, I just sat.

Q. Who did most of the talking? A. The attorneys.

Q. No, this is when the attorneys were not there, when Zwillman was there and Stacher was there, Holtz and Lentz and you. A. Lentz didn't say a word; he sat in the corner. I went with him, he came at my request; I met him at the Tavern Restaurant on Elizabeth Avenue. I went to Holtz; he said what do you want? I said this is a revelation. Maybe you will understand what is going on. You seem to know what's going on in this office, in that office, you should know what's going on in your office.

Mr. Tyne: Revelation, did I understand him to say?

The Court: Revelation.

Q. Now, did Zwillman enter into the discussion? Did he take a part in it? A. Yes, sir.

Q. Did Stacher take a part in it? A. Yes, sir.

Q. And did Reinfeld take a part in it? (1107) A. Yes, sir.

Q. Now, was there anything settled at that meeting? A. Yes, sir.

Q. This is the first meeting now. A. Yes.

Q. What was settled at that meeting? A. Well, there was nothing—I don't know how to put it; it was settled and it wasn't settled.

The Court: What was settled and what wasn't settled?

The Witness: Well, I had a drink at the bar with Joe while this thing was going on. He said, "Jim, I hope you don't believe these honest mistakes." I said, "I don't know what to think, Joe. I stuck up for you and you know it." We had a meeting in the Riviera Hotel when you were accused of robbing the company way back. I wouldn't even participate.

Mr. Tyne: I ask that that be stricken out.

The Witness: I can prove it is true by the rest of the partners.

The Court: That was a conversation between Reinfeld and himself at this time.

A. (Continuing) I wouldn't even attend the meeting—if that man ever took $2 I most certainly would get a dollar; he wouldn't steal nothing. Well, I was so amazed at what had happened I said, "Boys, I have found out what happened (1108) for a long time. You had better get George Goldstein to look over this—just look at things in general" and that's how the meeting came about and I said "I will not have one thing to say. I won't open my mouth. I am so disillusioned that I disillusioned you fellows. I said whatever you do to get any claims for me, it is all right. I am not going to say one word."

Q. Is that the reason you didn't actively participate in these conferences? A. Yes, sir.

Q. Now, do you remember the meeting on the following day when Mr. Kessler was present?

The Court: I understand there was nothing said the first day.

The Witness: At the bar, your Honor, Joe said: "Jim, I hope you don't feel that these honest mistakes were anything wrong on my part." He said, "Jim, you know I always told you you were closer to me than my own brother" he said. "Now, you got the same exact share my brothers got. He give a quick rundown and figured you got $260,000 coming." I said, "Joe, I don't want to say anything. I can't talk." And we had another drink. I didn't say a word; he done all the talking.

The Court: Then that remained unsettled, didn't it?

The Witness: Yes.

(1109) The Court: All right.

Q. Now, then, was there a meeting the following day when Mr. Kessler was present? A. Yes, sir.

Q. You were there at that time? A. Yes, sir.

Q. And Zwillman was there? A. Yes, sir.

Q. Stacher? A. Yes, sir.

Q. Popik? A. Yes, sir.

Q. Reinfeld? A. Yes, sir.

Q. Goldstein? A. Yes, sir.

Q. And Cohen? A. Yes, sir. Leave out Lentz. He wasn't there.

Q. I didn't include Lentz. A. From the first meeting he was not there.

Q. I didn't include Lentz. Now, do you recall at that meeting when Mr. Kessler was there, Mr. Kessler's saying "What is Rutkin doing here"? A. Yes, sir.

Q. What did Reinfeld say? (1110) A. "He has the same claim as your clients have."

Q. And do you recall Kessler saying after that "Let's take ours up first," or words to that effect?

Mr. Tyne: I object to that, if the Court please.

The Court: Don't lead him.

Q. Well, did they proceed to discuss claims then after Kessler got there? A. Yes, sir.

Q. Now, do you know the subjects that were discussed when Kessler was there? A. Yes, sir.

Q. What subjects were discussed? A. I believe the tax subject was the first discussed; then came the stock issue, that was No. 2, and they went on to the selling of whiskey to Browne Vintners from J. Reinfeld Company and adding that money, putting that in the company and putting the stock in Joe's name and when they did sell, he had the stock transferred to his name, and discussions along that line.

Q. When you say the tax subject, what taxes were they talking about? A. That Reinfeld had a tax problem that he settled for $480,000 or $490,000 and he had charged Zwillman and he had also charged me with part of that tax although it was all on his own.

(1111) Q. How did you know that he had charged you with part of the tax? A. I saw it on my slip there. I knew I was tax paid and he had taxed it again.

Q. What was he charging that to? A. He said "allow that and straighten it out, $30,000."

Q. Now, after they had some discussion between Reinfeld on the one side and Kessler on the other, or Kessler and Zwillman on the other, did Reinfeld do anything about Zwillman's share of the taxes? A. Yes, sir.

Q. What did he do? A. He allowed their money back.

Q. And did he subsequently have a settlement with you about the share of the taxes he charged you? A. Yes, sir.

Q. And what did he do with you? A. He allowed the tax.

Q. Now, then, after that meeting that day the Sunday when Kessler was there—by the way, you said this morning that you made no threats at Holtz' house? A. No, sir.

Q. Did you go in a room with Reinfeld alone in Holtz' house? A. No, sir.

(1112) Q. Now, then, were there later meetings held in Kessler's office? A. Yes, sir.

Q. Incidentally, before we leave Holtz' house, on one of those days when you were there was luncheon served by Mrs. Holtz? A. I think on all these occasions she served luncheon and a very good luncheon; she is a very lovely person.

Q. Did you participate in those lunches? A. When?

Q. With Reinfeld and Holtz. A. Yes, we were all very good friends, very, very good friends.

Q. Now, coming back to Kessler's office, did you subsequently have some meetings in Kessler's office? A. Yes, sir.

Q. At the first meeting in Kessler's office was Reinfeld there when you were there? A. Yes, sir.

Q. Zwillman? A. Yes.

Q. Stacher? A. Everybody but Lentz.

Q. Everybody but Lentz. His lawyers were all there? A. I believe so.

(1113) Q. That is Kessler and Popik? A. Yes, sir.

Q. And then was there some discussion at that meeting? A. Yes, sir.

Q. Then they adjourned to another meeting, to a second meeting in Kessler's office? A. Yes, sir.

Q. And at the second meeting in Kessler's office, were you there also? A. Yes, sir.

Q. Now, this went on over a period of some months, did it not? A. Yes, it did. It was over a period of a few months.

Q. And finally at the meeting in Kessler's office did Zwillman and Reinfeld come to an agreement as to how much should be paid to Zwillman? A. Yes, sir.

Q. How much was that? A. I believe it was $358,000.

Q. And after that agreement was arrived at, did you say anything about yourself? A. I said, "How do I stand? How about me."

Q. And what was told you then? Did Kessler tell you something? A. Yes, I wanted to take it up and Mr. Kessler knows me (1114) quite a while—in fact, he and Michael Hollander came up to Browne Vintners' offices about four years before that—Joe Reinfeld and I were together and Joe wanted to give him $5,000 for some campaign contribution—some contribution, it wasn't a campaign; some kind of an organization. He knew both of us very well and he practically said, "You fellows been together so long and are the closest of friends," he said, "You don't want to argue in public with the law. You don't need to. Why don't you go in there and talk things over among yourselves." I said, he is right. Joe said, "Yes, that's right; I agree with you."

Q. So you went in there, meaning another room? A. That's right.

Q. In Kessler's office? A. Yes, sir.

Q. Did you go in there and talk? A. Yes, sir.

Q. And what was the substance of your conversation in that room. A. There wasn't much for us to say, I was so disillusioned.

The Court: What was the conversation? Don't talk about disillusion.

A. We opened up. Joe said, "Jim, don't believe everything you see; a man is entitled to make some honest mistakes." I didn't answer. He said, "Now, I always told you I (1115) considered you like a brother always." He

said, "Now, you got what my brothers got, four hundred or four hundred and fifty, I don't know which, thousand." You got $250,000 left balance." I said, "Joe, you only said the last time $265,000. Now, it is $250,000" he said "Well, if I said 265,000 I made a mistake." I said okay, fine, forget about it. We come out,—shook hands and come out and forget about it.

(1116) Q. Now, when you came out did Reinfeld announce something as to what happened inside, as to whether or not you had come to an agreement? A. Well, when he come out we shook hands, we had a drink and "might as well forget it."

Q. All right. Who was it that said when they came out—someone said something about what the settlement was between you? A. Yes, sir, Joe said, "Jim is going to get $250,000. We are all happy. Jim, are you satisfied?" "Very happy." "Okay. Fine."

Q. Then you and Reinfeld shook hands? A. Yes, sir.

Q. Now then, after that was anything said about taxes? A. Yes, sir.

Q. What was said about taxes? A. Zwillman asked him, "Now, how about this money? Is this money tax paid? If I have to pay tax on it again," he said, "I might as well leave it where it is, for what good it will do me." I said, "That's the way I feel."

Q. You said? A. Yes. He said, "Don't worry."

The Court: Leave $250,000 there if you had to pay tax on it?

(1117) The Witness: Well sir, I would take it in part. If I had to pay tax on it I would stretch it over a period of three or four years; I wouldn't take it all in one year—cut the tax down.

Q. All right. A. (Continuing.) And either he or Sam Cohen produced the sheet showing this was every cent that

was paid on Browne Vintners by the front men; "don't worry about it, it's all tax paid."

Q. Well, did they say that? A. Yes, sir.

Q. They said it was all tax paid? A. Yes, sir.

Q. And did you see Cohen going over that sheet with Kessler? A. Yes, sir.

Q. All right. Now, referring again to this exhibit, D-11 in evidence, I call your attention to the fact that the first line says profit on a hundred thousand dollar investment, $164,559.10. Cash coming, $75,000. Can you explain that to us, please? A. Yes, sir.

Q. What does that mean? A. I had a hundred thousand up and Joe said, "Well, Jim, (1118) I had a lot of expense. That hundred thousand—I used twenty-five thousand of it on expense, on your share, but I am giving you a profit on the whole hundred thousand."

Q. In other words, you were getting a profit on a hundred thousand dollars but out of that you owed Joe $25,000? Is that is? A. Twenty-five, yes.

Q. That's what he said? A. Yes, sir.

Q. So that by this statement he was giving you the profit on the hundred thousand but giving you back 75,000 of the capital instead of a hundred thousand? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Is that what that means? Now, did you say anything to Reinfeld about your other investment of 60,000? A. Yes, sir.

Q. And what did you say to him about that? A. I told him, "How about adding it all up?"

Q. And did he say any reason why he hadn't put the 60,000 investment on there? A. He said, "You owe me 60,000."

Q. And what did you tell him about that? (1119) A. "How could you say I owe you 60,000? I gave you the money, in part but you got it"—

The Court: Let me interrupt you there. What was the hundred thousand? I remember the 60,000. Where does the hundred thousand come in?

The Witness: The hundred thousand is the money Joe fronted for me.

The Court: I thought that was 60,000.

The Witness: That's a different item. That's this sheet here, sir.

The Court: Well, never mind which sheet it is. How much did you have out of the $469,000?

The Witness: Out of the $469,000?

The Court: Yes.

The Witness: I had approximately thirty thousand twenty-nine something.

The Court: 29,000. And then you put in 31,000 later, is that right?

The Witness: Yes, sir.

The Court: That made 60,000?

The Witness: Yes, sir.

The Court: And where did the hundred thousand come in?

The Witness: When we put in the second million, (1120) too.

The Court: You put in a hundred thousand dollars then?

The Witness: Yes, sir.

The Court: Cash?

The Witness: Joe Reinfeld had my money, so it was cash, yes, sir.

The Court: Wait a minute, now. I don't get this. There was only $439,000 left out of the bootleg venture and you had in that thirty or twenty-eight thousand, is that right?

The Witness: Yes, sir.

The Court: So that Reinfeld only had 28,000 of yours.

The Witness: Yes, sir.

The Court: So then you put in 31,000 so that he had 60,000 of yours.

The Witness: Yes, sir.

The Court: And where did you get this hundred thousand of yours that you say you put into it?

The Witness: You see, sir, Reinfeld fronted some stock for me in the bootlegging combine and he always said, "Jim, this never touch, this and St. Pierre 3%." You see, he had 18½% of that St. Pierre Company that used (1121) to make money, first, for Reinfeld. Then the company never got nothing out of that. That was for him personally. I had 3% of that from him.

The Court: In addition to your share of the 469,000?

The Witness: Yes, sir.

The Court: And that 3% amounts to a hundred thousand?

The Witness: Oh, it amounted to more. He allowed me a hundred thousand, said it is not quite settled, but then he said a lot of people didn't pay off, and cut it down to 25,000 more, because a lot of goods were sold on credit up there.

The Court: Well, that is where the other hundred thousand that you had came from?

The Witness: Yes, sir.

The Court: I don't seem to recall having heard that before.

Mr. Van Riper: Well, no one testified to it before, no. No one knows anything about their participation in the St. Pierre situation except Reinfeld and Rutkin. That is, as far as I know.

The Court: He hasn't said anything about that before.

(1122) The Witness: No.

The Court: I was wondering where it came from. You see, a hundred thousand dollars to me is an awful lot of money, and that it can be so cavalierly forgotten—I mean I just want to know where it came from.

The Witness: No, it wasn't forgotten, your Honor. It was a question of honor. There was no receipt; you couldn't get any.

The Court: All a question of honor among—

Mr. Van Riper: Among gentlemen.

The Court: —among bootleggers. But that hundred thousand dollars was your share of Reinfeld's operations at Miquelon?

The Witness: Yes.

The Court: And that was separate and apart from the $460,000 from the combine.

The Witness: Yes, sir.

The Court: Now, who was in that Miquelon venture besides you and Reinfeld?

The Witness: Lentz was in and Kanengiser was in it and Facher was in it, but they didn't get nothing. I don't know who else was supposed to have 2%, 1½%, and so on.

The Court: All right.

Q. Now, then you say that you spoke to Reinfeld about your (1123) 60,000 investment and he said that you had a loan, and you called his attention to the fact that you had paid him back the loan. A. Yes, sir.

Q. And did you talk—and then what did you say, after you had reminded him of the fact that you had paid back the loan? A. He would look it up.

Q. Well, did he subsequently say something to you about that? A. Yes, sir.

Q. What did he say about that? A. "You are right, I made a mistake."

Q. Made a mistake. Now, then, did you talk with him about a profit on the $60,000 investment? A. Yes, sir.

Q. Did you figure the profit on the $60,000 investment and give him what you thought it should be? A. Yes, sir.

Q. And what did you tell him you thought it should be? A. Well, 60,000 and 96,000, or something like that, I gave him the figures on it, was 150, and 81 was 231, besides other money.

Q. Well, now, wait a minute. Let's— (1124) A. There was a lot of figures there.

Q. Wait a minute, now. Let's not get these figures so fast.

The Court: You said 60,000 and 96,000; now, what does that 96,000 represent?

The Witness: The profit on the 60,000.

Q. And did you figure that on the same basis as these figures here? A. A little better than eight to five.

Q. A little better than eight to five. And then you just said the $30,000 for taxes? A. Yes, sir.

Q. And then in your conversation with Reinfeld do I understand that you added the 60 and the 96 and the 30 to some figure of 81? A. Yes, sir.

Q. Do you know how much that added up to? A. Gee, I did add it up.

Q. All right, take your time about it.

The Court: Have you got it figured?

Mr. Cohen: I haven't added it.

The Court: Give me the figures.

The Witness: Yes, sir; 81—

The Court: 81,000.

(1125) The Witness: I won't take the change on it.

The Court: No, change doesn't amount to much. 81,000—

The Witness: And 30,000—

The Court: 30,000.

The Witness: There was—

The Court: Sixty some thousand, was there?

The Witness: Sixty thousand.

The Court: Sixty.

The Witness: And 96,000.

The Court: And 96. There is another one here.

Mr. Van Riper: Are those the items the witness just gave us?

The Court: Well, that amounts to 267,000, so far.

The Witness: No, it was more than that.

Q. Well, now, do I understand, then, that that is the figure that you figured up there for Reinfeld on that day, one of those days at Holtz's? A. Yes, sir.

Q. And did you say—did you represent to Reinfeld that that was due you? A. A lot more due me than that.

Q. All right. But you told him figured for 267,000, is that right? (1126) A. Yes, sir.

Q. And is that when he said, "Well, Jim, I will give you 250," or 265? What did he say? A. 265.

Q. He said, "I will give you 265"? A. Yes.

Q. And it stayed in that condition and in that state? A. There was only one change, he said 265, he said, "You will have approximately what my brothers have," and then he changed the 265 to 250.

Q. But it stayed—he made the offer at 265 and it stayed there, as I understand it, until the last meeting at Kessler's office? A. Yes, there was no offer, he said, "Jimmy, that is the same as my brothers 265," and that was it.

Q. He made that statement? A. And he made the next statement, "You got 250 coming," and he said, "I am not going to give you any more, that is the end."

Q. He made the statement, "You got 250 coming"? A. Yes, sir.

Q. And there was nothing said by Reinfeld to you about figures until the last meeting at Kessler's office, isn't that so? (1127) A. Yes, sir.

Q. Until you went out in a private room. A. Yes, sir.

Q. Which was some two or three or four months later. A. Yes, sir.

Q. And at that time he said he will give you $250,000. A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Mr. Van Riper: I will take a minute, if your Honor please.

Q. I show you these photographs, Mr. Rutkin, that have been marked D-1 for identification, there are five of them, all in as one exhibit for the purpose of the record, and look at them. You appear in each one of those photographs, do you? A. Yes, sir.

Q. And does Mr. Reinfeld appear in each one of them? A. Yes, sir. And the rest of the Reinfelds, and his cousin, Hans, from Hanover, Germany is in there.

The Court: When and where were they taken?

The Witness: These were taken in 1932.

Mr. Tyne: Well, now—

The Witness: I can tell you from the pictures (1128) where they were taken without looking at the back of them. This was taken—we got off a boat ride at Hamburg, somewhere. This is at the race track, your Honor, either in Paris or London.

The Court: Longchamps or Au Paix?

The Witness: Au Paix, because we picked a winner that day. I think we made an inscription what Fanny Brice had said to us.

The Court: "Eddie asked Fannie Brice, 'Where do you get straight betting?' 'Nothing is straight here,' said she."

The Witness: That is true.

The Court: Now, where were the others taken?

The Witness: This was taken at the airport, I believe it was in England; and this was in Hamburg.

The Court: They were all taken in the same year?

The Witness: Yes, sir.

The Court: At the time—

The Witness: (Continuing.) Lou Susskind, Joe's brother-in-law, took many other pictures.

The Court: At the time of the trip that you made—

The Witness: For the agencies.

The Court: —for the agencies?

The Witness: Yes, sir.

(1129) Mr. Tyne: May I look at them, sir? I want to see if there is writing on them.

The Court: Yes, there is some writing on the backs.

Mr. Tyne: I don't want to take time to read this writing here.

The Court: Are you offering those in evidence?

Mr. Van Riper: Yes, your Honor.

The Court: All right, mark them in evidence.

(Exhibits D-1b, c, d and e, previously marked for identification, received in evidence.)

The Witness: Here is another one.

Mr. Tyne: Is there any writing on the back?

The Clerk: D-1a received in evidence.

(Exhibit D-1a previously marked for identification, received in evidence.)

Mr. Tyne: No writing on the back of that, is there?

The Clerk: Yes.

The Court: "Da Henen, Da gaen, Badder."

Mr. Tyne: I don't know what it means.

Mr. Van Riper: Is that good or bad?

The Court: That is Das weiss ich nicht.

Q. Mr. Rutkin, I overlooked asking you, were you up in Boston in (1130) '37 or '8? A. Yes, sir.

Q. You got in some difficulty up there? A. Yes, sir.

Q. You were convicted up there, weren't you? A. Yes, sir.

Q. And that was in connection with what? A. Operation of an unlicensed, unregistered distillery.

Q. Did Mr. Reinfeld have anything to do with that? A. Yes, sir.

Q. Who paid your lawyer when you were convicted in Boston? A. I didn't hire the attorney.

Q. Who hired him? A. Either Joe Reinfeld or Ben Zuckerman.

Q. Do you know who paid him? A. Joe Reinfeld.

Q. Now, in 1948 did you start a suit in New York against Joe Reinfeld? A. Yes, sir.

Q. And who else are you suing in New York besides Joe Reinfeld? A. Bronfman brothers and Seagrams Distilleries.

Q. And how much damages are you claiming in that suit?

Mr. Tyne: Now, if the court please—

(1131) The Court: A few pennies.

Mr. Van Riper: Well, I think a few pennies with a couple of extra dollars change.

The Court: $22,000,000, is it?

Mr. Van Riper: That is it.

The Witness: That is not all, your Honor. I reserve the right and I am still investigating, and it may be more.

The Court: On how much of an investment?

The Witness: Well, your Honor, it wasn't the matter, just think how much the Bronfmans and Reinfeld started with; they got an empire; they started with nothing, too.

The Court: I am not talking about that, I said on what investment.

The Witness: On what investment up there?

The Court: The money that you have spoken of here?

The Witness: No, sir, no, sir.

Q. That has to do with other matters? A. Other matters.

Q. At any rate, you started that suit in New York? A. Yes, sir.

Q. Has that suit been brought to trial yet?. A. It is on the docket and ought to be up very shortly.

(1132) Q. But it has not been brought to trial? A. No, sir.

Q. The suit has not actually been in court? A. It started in 1948. No, sir, it has not been brought to trial.

Q. But certain testimony has been taken? A. Yes, sir.

Q. In New York? A. Yes, sir.

Q. In that matter?

Mr. Van Riper: If the court please, I offer in evidence a certified copy of the complaint and answer in the New York suit.

The Court: For what purpose?

Colloquy of Court and Counsel

Mr. Van Riper: For the purpose of proving—not the proving of the contents of the allegation, simply for proving that suit has been started and is in existence.

The Court: He might have some suits out in California, too. How is it relevant to this issue?

Mr. Van Riper: It is relevant here because I want to show that it was started in 1948 and show it as a motive for Reinfeld's story.

The Court: I think there has been testimony here, and it is uncontroverted, in fact it was testified to, (1133) also, by Reinfeld, that there was a suit started against Reinfeld, Bromman, et als., for $22,000,000 by this defendant.

Mr. Van Riper: I don't want to prove the other case here.

The Court: No, I think it would just clutter up the record.

Mr. Van Riper: It is enough to prove one case.

(Discussion at side bar.)

The Court: Mr. Van Riper at the present time is finished with this witness and you will step down and we will recall—

Mr. Van Riper: Mrs. Thum, please.

(Witness temporarily excused.)

The Court: Mrs. Thum.

(Mrs.) Peggy Thum—for Defendant—Recalled—Direct

(Mrs.) Peggy Thum, having been previously duly sworn, was recalled on behalf of the defendant and testified as follows:

Direct examination by Mr. Van Riper:

Q. Mrs. Thum—

Mr. Van Riper: Mrs. Thum was sworn yesterday.

The Clerk: Yes.

Q. Mrs. Thum how many different locations were the Browne Vintners office in New York when you worked there? (1134) A. Three.

Q. And will you tell us where they were, please? A. They were all located in Radio City, the RCA Building, International Building and Associated Press.

Q. Now, I always get mixed up on this, myself, between Radio City and Rockefeller Center; now, is the Rockefeller Center a building or group of buildings? A. A group of buildings.

Q. Rockefeller Center is a group of buildings. A. Yes, sir.

Q. And what is Radio City? A. A group of buildings.

Q. And aren't they all together, practically? A. No, they are three separate buildings.

The Court: They are three separate buildings, but all in the same section—

The Witness: Area.

The Court: Area, they run between Fifth Avenue and Sixth Avenue—

The Witness: Yes.

The Court: And—

The Witness: They run between 52nd and 50th Streets, between Fifth and Sixth Avenues.

The Court: And both Radio City and the (1135) Rockefeller Center, all those buildings are in that area?

The Witness: Yes, sir.

Q. They are right close to one another? A. Yes.

Q. Now, do you know Mr. Callahan? A. Yes, I do.

Q. You saw him on the stand yesterday? A. Yes, sir.

Q. Did you ever see him come to Browne Vintners? A. Yes, sir.

Q. And did he come to see you when he came there? I mean did you greet him when he came in? You were the receptionist? A. Yes, sir.

Q. Did he see Mr. Reinfeld? A. I don't remember.

Q. Do you ever recall any times when he did not see Mr. Reinfeld? A. I do recall that he did not see Mr. Reinfeld.

Q. You recall that he did not see Mr. Reinfeld? A. But I don't know whether he saw him or not.

Q. But you recall there were times when he did not see him? A. Yes, sir.

(1136) Mr. Van Riper: All right. Thank you very much, Mrs. Thum.

Mr. Tyne: I just want to ask one question, that isn't on this matter.

Cross examination by Mr. Tyne:

Q. The reception room is partitioned off, is it not, from the bar? A. Oh, yes, it is a separate room entirely.

Q. A separate room entirely? A. Yes.

Q. So you can walk from the reception room through a corridor and then into the bar, is that right? A. You have to go through the reception room in order to get to the bar.

Q. And if you got into the bar—strike it out. If you got into the bar why people could walk in and out of

offices, isn't that right, and you wouldn't see them in the reception room? A. Oh, yes, I would see them, that room is always open so that I could see them.

The Court: Does the bar lead to another hall or does it lead off the reception room?

The Witness: It did lead off from the reception room and into the other offices, as well.

(1137) The Court: All right.

Mr. Tyne: No further questions.

The Court: All right, step down.

(Witness excused.)

The Court: We will recess now until tomorrow morning at ten o'clock.

I don't know whether we will be able to get your witness or not, but you will have the other man here?

Mr. Van Riper: Yes, sir.

The Court: And then you may proceed with cross examination unless you have a few more questions on direct.

Mr. Van Riper: As I understand it, Mr. Pass will be taken care of early in the morning?

Mr. Tyne: Yes, sure.

The Court: All right, the Jury will be excused first; with the usual admonition, which I hope needn't be repeated.

(Adjourned to Thursday, October 19, 1950, at ten a.m.)

Samuel W. Pass—for Defendant—Recalled—Cross

(1138) Newark, New Jersey,
Thursday, October 19, 1950.

(Trial resumed pursuant to adjournment.)

(Appearances as noted before.)

(Side bar colloquy court and counsel.)

The Court: For the record do you consent that the witness Pass be examined in your absence?

Mr. Rutkin: Yes, sir, anyone.

The Court: Any witness may be examined in your absence. Note that for the record.

Judge Van Riper, for the record you consent with your client that this witness or any other witness may be examined in his absence.

Mr. Van Riper: Yes, your Honor.

SAMUEL W. PASS, recalled.

Further examination by Mr. Tyne:

Q. Mr. Pass, you recall when you were on the stand last time you were excused and I said I would call you back. A. Yes, sir.

Q. And you were testifying in connection with the meeting of Mr. Reinfeld in connection with the White Rock deal. A. Yes, sir.

Q. And you have given certain dates and certain testimony relating to that deal that eventually fell through? A. Yes.

(1139) Q. I believe you said that it fell through rather suddenly. A. Yes, sir.

Q. Since you have testified have you searched your memory in connection with the time and the circumstances

surrounding that deal? (1140) A. Last night I thought a good deal about that and I went back—I knew it was two weeks after the Reinfeld deal fell through, I went two weeks later, about two weeks later I called on Mr. T. R. Williams, who was chairman of the Board of the White Rock Company, and asked him whether he would give me permission to go ahead and seek another buyer.

Q. Yes. A. And he thought it was too late, that they were in other negotiations for the White Rock Company and he named the National Distillers.

Q. I see; he named the National Distillers? A. Yes, sir.

Q. And National Distillers ultimately bought it? A. Yes, sir.

Q. Do you remember when you were talking with Mr. Reinfeld about this deal that you had a conversation with him relating to his family, certain members of his family, his grandson—do you remember that? A. No, sir.

Q. Let me go a little further. Well, go ahead. A. Yes, I believe you are right, sir.

Q. Yes. And didn't you say, "Well, as a good omen, I'll purchase a share of stock in White Rock" for your grandson? (1141) A. I did, yes, sir.

Q. And that stock was purchased? A. Yes, sir.

Q. By you, and delivered by you at the time you had undertaken the negotiations? A. Yes, sir.

Q. And I believe a letter was sent in connection with that share of stock, was it not, to you?

The Court: Well, what is the purpose of it, Mr. Tyne?

Mr. Tyne: Fixing the time, sir.

The Court: All right.

Q. A letter was sent with that, was it not, by the broker to you, with the share of stock, and you in turn delivered

the letter and the share of stock to Mr. Reinfeld? A. That could be.

Q. I was wrong, I said the broker, it was from White Rock Company, White Rock Mineral Spring Company, is that right? A. That would be correct, sir, yes, sir.

Q. And will you just look at that letter and tell us whether that was the letter you received or you delivered? A. It was.

Q. That is the letter? A. That's right.

(1142) Q. And will you look at the date on there, sir, the date of the letter? A. July 7, 1943; that's right.

Q. July 7, 1943? A. That's right.

Q. And will you look at the share of stock. A. Yes, sir, that is it.

Q. What is the date of the share of stock? A. I don't see a date—oh, October 22, 1942.

Q. Yes. Now, that was the date? A. No, that couldn't necessarily mean that; I don't know anything about that date. I think this is the date.

Q. No, please. A. Okay.

Q. The name is Robert Willian Levin? A. That is right.

Q. Who is that? A. That is Mr. Reinfeld's grandson.

Q. And that was the date on which the share of stock was purchased by you, wasn't it? A. I wouldn't know that date.

Q. Look at the date. A. It is on October 23rd, 1942; that's right. But I don't know what the difference between those dates are.

(1143) Mr. Tyne: I would like to have it offered in evidence. This is the share of stock.

The Court: It is not your case—you didn't call this witness?

Mr. Tyne: No, I didn't. I would like to have it marked for identification.

The Court: All right, mark it for identification.

Mr. Tyne: The share of stock, first.

The Clerk: The share of stock is marked G-4 for identification.

(Marked Exhibit G-4 for identification.)

Mr. Tyne: Now I would like to have this marked for identification.

The Clerk: The letter is marked G-5 for identification.

(Marked Exhibit G-5 for identification.)

Q. I was quite incorrect when I referred to this letter as being the letter that accompanied the share of stock. Will you look it over again, Mr. Pass? A. (After examining.) That's right.

Q. It has reference to the dividend, doesn't it? A. That's right.

Q. (Continuing.) In reference to this share of stock? A. That's right. That date must be correct, then.

(1144) Q. It was purchased October 22, 1942? A. That is what it is.

Q. Purchased by you? A. Yes, sir.

Q. At the time that you undertook these negotiations? A. That is right.

Q. So that you are mistaken about the date, are you not? A. Well, that would indicate it.

The Court: I don't know what you mean, mistaken about what date?

Q. About the date as being—I don't want to misquote you—September, 1943, when the negotiations were undertaken. A. That was my recollection, yes, sir.

Samuel W. Pass—for Defendant—Recalled—Cross

Q. Yes, but this here refreshes your recollection and you now agree—you now accept the correction, do you not? A. I believe so, yes, sir.

Q. So that the negotiations were undertaken at least by October 12, 1942? A. That's right, sir.

Q. And had the negotiations preceded this date by some months—did it not? A. I wouldn't know that, sir.

The Court: Well, why did you get the stock? Did you get it just because you started these negotiations?

(1145) The Witness: Yes, sir.

The Court: Use your head and tell us for what.

The Witness: I would say it was just about the time it was started, according to that. I bought the stock, it was a good luck omen, as the District Attorney states.

Q. Yes. Now, let me refresh your recollection further, Mr. Pass. I believe you testified that Mr. Rutkin introduced you to Mr. Reinfeld. A. Yes, sir.

Q. Are you sure about that? A. I am definite about that.

Q. Well, isn't it a fact, Mr. Pass, that Mr. Jack Owen introduced you to Mr. Reinfeld? A. No, I met Mr. Owen with Mr. Rutkin.

(1146) Mr. Tyne: Mr. Owen. Will you stand up, Mr. Owen?

(A gentleman stood up in the courtroom.)

Q. Do you remember Mr. Owen? A. Very well, sir.

Q. And is this the gentleman that introduced you to Mr. Reinfeld? A. No, sir.

Mr. Tyne: Sit down.

Samuel W. Pass—for Defendant—Recalled—Cross.

Q. See if I can refresh your recollection. Do you remember Mr. Owen coming to see you to talk to you about White Rock? A. No, sir; I—may I tell this in my own way?

The Court: No, just answer the question. Do you remember him coming to see you about the White Rock deal?

The Witness: No, sir, I don't.

Q. Not at all? A. I met with Owen, with Mr. Reinfeld for lunch with Mr. Tom Williams, Chairman of the Board of the White Rock Company.

The Court: What did Mr. Owen have to do with it?

The Witness: Mr. Owen was advertising agent for the Browne Vintners Company.

Q. At that time? A. At that time, yes, sir.

Q. That's right, and didn't Mr. Owen come to you wherever (1147) you located at the time and tell you that he had been observing White Rock, that it was owned by old people and he would like to do something about it. He even thought that he himself was interested in getting control of it. A. Well, sir, that was my creation; it wasn't his.

Q. He did tell you though that he was interested in White Rock? A. Well, I told—

The Court: Did he tell you that or not?

The Witness: No, sir.

Q. Did you have any conversation with Mr. Owen in connection with any indicated control that he wished to get of White Rock? A. Mr. Williams, Mr. Owen, Mr. Reinfeld and I had lunch together when I brought—

The Court: Did you have a conversation with Owen with relation to his possible control of the stock?

The Witness: I talked about control of the company to Mr. Reinfeld in—

The Court: Did you have a conversation? Answer the question. You are a big business man.

The Witness: I did not have any conversation with Mr. Owen for the acquisition and control of the White Rock Company.

The Court: All right, that is flat and categoric.

(1148) A. You said before that Mr. Owen was in the advertising business. Do you remember the name under which he was operating at the time? A. Well, his name was one of three or four names, three names.

Q. What were they, do you recall? A. I wouldn't remember the other names.

Q. White and Owen? A. White may have been one of the names, yes, sir.

Q. And is he nicknamed Babe White? A. I think so: He was a big man.

Q. Did you hear him refer to in court here any time you were about? A. No, sir.

Q. This Babe White was in the advertising business? A. He was Jack Owen's partner, I assume.

Q. And they did the advertising for Browne Vintners? A. Yes, sir.

Q. Now, do you recall a conversation with Mr. Owen in which he said he is interested in White Rock, he would like to get some ownership or control because he wanted to get the advertising? A. No, sir, that isn't so.

Q. You don't recall— A. He did after I brought Mr. Williams to the office of (1149) the Browne Vintners

Company. Naturally he was going to get the advertising. That was quite a natural assumption.

Q. Well why do you say it is a natural assumption that Mr. Owen was going to get the advertising? A. Mr. Reinfeld was a good friend and he handled the Browne Vintner accounts.

The Court: You mean that is your conclusion that if there had been a sale of the White Rock to Reinfeld that Browne would get the advertising?

The Witness: Yes, sir, that Mr. Owen would get it.

The Court: Or Mr. Owen.

Q. Did he ever mention that he didn't think he would get the advertising if White Rock was sold to Browne Vintners? A. Yes, sir.

Q. So that there was a conversation between you and Mr. Owen—

The Court: No, your question before was whether there was any conversation about Owen's getting control.

(1150) Q. Then, as I understand it, what your testimony is, is that you did have a conversation with Mr. Owen concerning White Rock insofar as it affected the advertising that he might get out of it? A. Yes, sir; I had many conversations with Mr. Owen.

Q. Yes. And was that before you started negotiations with Mr. Reinfeld looking toward the purchase of it? A. They started after our opening luncheon date. I had many talks and meetings with Mr. Owen.

Q. Yes. A. Soliciting his help and support in trying to make the deal come to a conclusion.

Samuel W. Pass—for Defendant—Recalled—Cross

Q. I see. Now, you testified on direct examination that your negotiations did conclude about four or five months after they started—did they not? A. That's right, that's right.

Q. They continued four or five months? A. Yes.

Q. So, if they started in the late summer or the early fall of 1942 they concluded in the latter part of 1942 or the early part of 1943; correct? A. Well, according to that stock.

Q. There is no question about that, is there, Mr. Pass? A. That's right. Well, the thing that disturbs me, sir—

(1151) Q. No, no, please; there is no question pending. A. All right, sir. We will say that's right.

Q. No, I don't want you to say "We'll say that's right." That's the fact, isn't it? A. Okay, okay, sir.

Q. No, is it the fact? A. Yes, sir, according to the stock.

Q. That's all I want. A. Yes, sir.

Mr. Van Riper: Are you finished with him?

Mr. Tyne: Yes, sir.

By Mr. Van Riper:

Q. Now, may I ask you, Mr. Pass, what is the fact? Mr. Tyne two or three times said, "It is the fact, isn't it?" And you finally said, "It is the fact." What is the fact as to the date when the negotiations were concluded, when Reinfeld called the deal off or what? A. In my previous testimony I said the deal took about—

The Court: No, the question now is, what date was it? Never mind reciting your previous testimony. What date was it? Answer the question.

The Witness: Six months from October 21st or 22nd, whatever it was.

Samuel W. Pass—for Defendant—Recalled—Cross

Q. The stock was dated October 23rd—

(1152) The Court: That would be about April 1943, would it?

The Witness: That's what it would be, yes, sir.

Q. 1943 was when the negotiations were concluded? A. That's right.

Q. Has there been anything in your testimony this morning or about this stock or about this letter which changes your mind in any way about what you testified to the other day—

Mr. Tyne: Oh now, if the court please. He has already changed his testimony.

The Court: Well, the jury knows what he testified to.

Mr. Van Riper: May I ask the question before it is objected to?

The Court: Finish your question, Judge Van Riper, if you will.

Q. Has there been anything about this stock or about this letter which has been shown to you by Mr. Tyne which changes your testimony of the other day to the effect that Reinfeld said he wouldn't go through with the deal because of the attitude of the banks? A. Well, that's right; that he wouldn't—that he didn't go through with the deal because of the attitude of the banks; that's right, sir.

(1153) Q. I mean your testimony isn't changed in that in any respect, is it? A. No, not at all.

Q. Now then, I think you said the other day that you had some papers— A. Yes, sir (producing.)

Q. Which showed why you said that this check was received in 1944. A. That's right.

Q. Is that right? And you show me a paper.

Mr. Van Riper: May I have it marked for identification, please?

The Clerk: Marked defendant's exhibit 12 for identification.

(Marked Exhibit D-12 for identification.)

Q. And what is that paper, Mr. Pass? A. That's my income for 1944.

Q. And whose handwriting is it in? A. My handwriting.

Q. And does the notation on there indicate—what? A. Indicates income from Joseph H. Reinfeld—

Q. No, don't give us the name. A. Oh.

Q. I mean, it indicates—does it indicate income which (1154) you received in '44? A. Yes, sir.

Q. And for what purpose did you make that? A. For my income tax.

Q. And did you give that paper to someone? A. I gave it to my attorney.

Q. Who? A. Mr. Samuel A. Reinick.

Q. And is he the man who prepared your income tax return? A. Yes.

Q. Do you have a copy of that return here? A. Yes, sir, I have; right here, sir.

The Court: What is the purpose of all this?

Mr. Van Riper: If your Honor please, the witness testified the other day that he received this check in 1944, and I think the witness is entitled to have the Jury know—

The Court: I don't care about the check. I told you that 15 times. I don't care about any money he got from Reinfeld or anything else. Let him testify as to when his negotiations ended, and he has testified to that and was perfectly definite about it,

and so far there has been no contradiction of that; and he says that he later got a check—I don't care about that.

Mr. Van Riper: All right, then.

(1155) The Court: I don't care about his income tax.

Mr. Van Riper: As long as there is no contradiction about the date of the termination of the negotiations, all right, Mr. Pass, I won't take these papers from you; you had better keep them.

That's all.

Mr. Tyne: No further questions.

The Court: All right.

Will you ask the Chief Deputy Marshal to come here, please? I will try to find out about that witness, Mr. Van Riper.

Mr. Van Riper: Yes, sir.

(Off the record discussion between court and counsel.)

The Court: The Jury will be excused now for a few minutes until we find out about Mr. Rutkin.

(At this point a short recess was taken.)

Mr. Van Riper: Will you take the stand, Mr. Rutkin?

JAMES A. RUTKIN, resumed.

Mr. Van Riper: Mr. Tyne, will you turn to page 1129 of the testimony, I just want to make a correction.

If your Honor please, I would just like to correct the record a moment, if I may?

(1156) The Court: All right.

Mr. Van Riper: I just asked Mr. Tyne to look at page 1129. The question at the bottom of the page reads as follows: "Mr. Rutkin, I overlooked asking you, were you up in '37 or '8" "Yes, sir." "You got in some difficulty up there?" He said, "Yes, sir." The word "Boston" was left out. What I said was, "Were you up in Boston"—

The Court: Yes, I remember that.

Mr. Van Riper: I think Mr. Tyne will agree to that.

Mr. Tyne: Yes, sure.

Mr. Van Riper: And I would just like to have the record corrected accordingly. The word "Boston" should have been included in that.

Mr. Tyne: All right.

The Court: And I might correct something in the record, too. Just the line before that, the court said not "That is Dan weiss ich nicht." I said simply, "Das weiss ich nicht."

Mr. Van Riper: That's right. This would look very badly, sir, to a real grammarian, to think you used both languges in one sentence.

The Court: To a philologist it (1157) wouldn't be very good.

Mr. Van Riper: No. Then I take it my motion to strike out the words "That is" is granted.

The Court: That's right; and the motion to add in "Boston" is granted.

Mr. Van Riper: I was practically finished. I just have a question or two.

The Court: All right.

By Mr. Van Riper:

Q. Mr. Rutkin, what we were just talking about here on the record was when I asked you yesterday if you were up

in Boston, you were convicted up there, and you said you were. A. Yes, sir.

Q. You went to jail up there, did you not? A. Yes, sir.

Q. And how long did you serve? A. Nine months.

Q. Now, had you previously been convicted of crime? A. Yes, sir.

Q. How many times, do you know? A. I believe it was three times.

Q. Were you ever sentenced to jail before? A. No, sir.

(1158) Q. One more question: I show you—

Mr. Van Riper: What is the exhibit number, do you know, for the release?

Mr. Tyne: I think I found that original.

The Clerk: Number 8.

Mr. Tyne: Do you want the original?

Mr. Van Riper: I would like to, if you have found it, if you have it.

The Clerk: D-8 is the number of the exhibit, Defendant's exhibit 8.

Q. I show you a photostatic copy of exhibit D-8, which purports to be a release, and ask you if that is your signature on the bottom line. A. Yes, sir.

Q. And did you sign that in Mr. Kessler's office on the day you got the money? A. Yes, sir.

Q. Was it signed the same time that Zwillman and Stacher signed? A. We all signed at the same time.

Mr. Van Riper: Thank you.

The Court: Have you the original now, Mr. United States Attorney?

Mr. Tyne: Yes, sir, I have the original.

(1159) The Court: All right, let the original be substituted for the photostatic copy heretofore marked.

Mr. Van Riper: Yes.

The Clerk: The original exhibit is marked D-8 in evidence.

The Court: It will be substituted for the photostatic copy heretofore marked D-8.

Mr. Van Riper: I don't know whether it is necessary to ask him the question over again.

The Court: He might as well ask him.

Q. I show you the original, Mr. Rutkin, and ask you the same question. Is that your signature? A. Yes, sir.

Q. And was that signed by Zwillman and Stacher? A. And all the attorneys; we all signed right here.

Mr. Van Riper: All right. Thank you. Cross examine.

(1160) *Cross examination (resumed) by Mr. Tyne:*

Q. Now, Mr. Rutkin, I believe you testified yesterday that you were operating your own bootlegging enterprise in the early 1920's, is that so? A. Yes, sir.

Q. For how long? A. Well, I would say five or six years.

Q. Five or six years starting with what year? A. '22.

The Court: Speak up please.

The Witness: 1922 or thereabouts.

Q. Till 1927 or '28 when you went in with Reinfeld? A. Yes, sir.

Q. What did your operations consist of during that period when you were alone? A. I went to the seashore, I used to buy a carload of liquor and re-sell it in Newark or the seashore.

Q. From whom would you buy it? A. Oh, different operators.

Q. What kind of operators? A. Well, boat pullers.

Q. Boat pullers. And whereabouts in the seashore would you purchase the liquor? A. Well, at the Highlands and sometimes right here.

Q. In Newark? (1161) A. Newark, yes, sir.

Q. And you would buy a carload at a time? A. Automobile carload.

Q. Truck loads? A. Yes, sir.

Q. And how often would you buy the carload of liquor during this period? A. Quite often.

Q. Well, what do you mean by quite often? A. Well, probably once every two weeks or every month.

Q. Would you make your purchases mainly in Newark or down along the shore? A. I would say both places there was a fellow named Ralph Bitters down at the Highlands who was a good friend of mine and I used to purchase it especially from him.

Q. And you purchased this liquor from Pullers who brought this stuff in from boats off shore, is that right? A. Yes, sir.

The Court: You were a small operator, were you?

The Witness: Yes, sir.

Q. How many trucks did you have? A. None.

Q. Did you hire trucks? A. Yes, sir.

Q. Did you sell the liquor personally? (1162) A. Yes, sir.

Q. Where? A. Mainly in New York City; a lot of it in Newark too.

Q. And did you put in an appearance down at the docks or the shore, wherever it was, at the time the stuff was purchased? A. No, sir, not at the dock.

Q. Not at the dock? A. No, sir.

Q. You were never at the dock during this period? A. During that period, well, I wouldn't say never, maybe a few times I would go down and take it right off the dock, or go to the garage.

Q. Beg pardon? A. Sometimes they wouldn't want anybody to know where the garage was. They would take the liquor and deliver it to the addresses specified on it.

Q. But you had no cars or trucks?

Mr. Van Riper: He didn't say he had no cars.

A. I had a car.

Q. Personal car? A. Yes, sir.

Q. But you didn't use that to transport these carloads of liquor? A. Yes, I did.

(1163) Q. You said you did that once or twice a week, bought a carload once or twice a week. A. I would say every two weeks, maybe every week, according to what the demand was and so on; sometimes three days in a row, and sometimes not for two weeks.

Q. Would it be fair to say that you sold four carloads of liquor a month on the average? A. Yes, that would be a good guess.

Q. Did you store that liquor in garages? A. No, sir, there wasn't enough to store.

Q. There wasn't enough to store—you sold it immediately? A. Well, as fast as I could, and I had some of it stored before I purchased it.

The Court: When you were left with some that you hadn't sold, where did you store it?

The Witness: In a garage.

Q. In a garage? A. Yes, sir.

Q. Where was this garage? A. We had several of them. One was right next to 60 Branford Place, a garage that is

there now near Washington Street. We had one garage on Longfellow Avenue and one was down at Somme Street.

Q. I understand that you had three garages then. A. At various times, not all at one time.

(1164) The Court: You said "we", who were the we?

The Witness: Well, I don't know, just myself and the driver.

Q. You were operating alone, you would get the stuff and you would sell it. A. Yes, sir.

Q. How much did you store in the garage at any one time? A. As much as 100 cases.

Q. Then would you go out and sell those to speakeasies and the like of that? A. Yes, sir.

Q. But the bulk of the whiskey that you purchased was sold by the carload as soon as it arrived, is that so? A. I didn't buy carloads of liquor.

Q. You didn't buy carloads of liquor? A. Automobile loads, I would say.

Q. Truck loads?

The Court: You mean truck loads?

A. Small truck loads, yes.

Q. How big a truck? A. A freight car would hold 1500 cases.

Q. All right, you don't mean a freight car. A. No, sir.

Q. You mean an automobile truck? A. Yes, sir.

(1165) Q. How many tons would that truck be? A. It would average, one car would take 28 cases, and we had a small delivery truck that I didn't own which would take about 60 or 80 cases, something like that.

(1165A) Q. And you sold that immediately, is that right? A. As fast as we could.

Q. Well, what do you mean by "as fast as you could"? A. Well, I had salesmen, you give them a commission.

Q. Now, were these salesmen down at the docks when the liquor came in? A. No; for example, the automobile driver, if he had any customers of his own he would make a commission.

Q. Well, when would you be paid for this liquor that you sold, that is what I am trying to find out. A. Sometimes immediately and sometimes—

Q. What percentage of the time would you be paid immediately? A. I would say 50% of the time.

Q. 50%. And the other 50% you got on record, is that right? A. Yes, sir.

Q. You sold on credit. A. Yes, sir.

Q. Now, during this period of time did you pay off to anybody in order to operate? A. No, sir.

Q. At no time? A. No, sir.

Q. During the five or six years you were operating? A. No, sir.

(1166) Q. And you were never molested in any particular? A. I wouldn't say; I don't think so, never.

Q. Never? A. No, sir.

Q. As I understood your testimony on direct examination, the most that these bootlegging operations cost you in tribute to any official was a bottle of liquor now and then to a policeman? A. No, not a bottle, it wasn't always a bottle. Sometimes a case or two cases; a little liquor.

Q. A little liquor? A. Yes, sir.

Q. In all of the five years that you operated you never paid a cent to anybody? A. To the best of my recollection I never remember giving anybody a cent, no official, no, sir.

Q. During this period of time you knew that Reinfeld was operating, didn't you? A. Yes, sir.

Q. How long was he operating, would you say? A. Well, I remember Joe Reinfeld when he had a liquor company where they had a wholesale—liquor for medicinal purposes. I recall that well because that was rated by the Federal Agents on account of some papers or something they (1167) had. That is when I first heard of Joe Reinfeld, and from then on he was with a big combine and pulling liquor.

Q. Yes. Now, were any of your warehouses or docks ever raided? A. May have been, I don't recall.

Q. You don't recall? A. No, sir.

Q. You don't recall any raid ever took place on any of the docks or garages in these five or six years? A. No, sir, no one time stands out in my memory.

Q. No one time? A. No, sir.

Q. And your best recollection is that you were never raided and you never lost any liquor by seizure of any kind? A. No, sir.

Q. You never had any liquor hi-jacked on you? A. Yes.

Q. You did? A. One of the boys came back, he lost, I think it was about 40 cases he lost one time.

Q. He lost it how, would you mind telling me? A. Well, he said some fellows just came along and took the liquor, took the car away from him and told him where he would find the car, and that was the end of it.

(1168) Q. You didn't do anything more about it? A. No, sir.

Q. How much did you make—strike it out. How much was your profit per month? A. It varied, sometimes I paid $60 a case for liquor and we were selling it for 80, 90 and a hundred; sometimes liquor would cost $40; the prices would come down. You had to compete with other people.

Q. All right. Now, will you please tell us how much you made in dollars per month, or any other convenient

period? A. I would say during that period, I would say I was earning about $25,000 a year.

Q. $25,000 a year? A. Yes, sir.

Q. Net? A. Yes, sir.

Q. These five or six years before you went into the Reinfeld group? A. Yes, sir.

Q. And you had nobody to account to? A. No, sir.

Q. Did you ever report that income in your returns? A. No, sir.

Q. When you joined up with the Reinfeld group, I believe (1169) you said there was a number of partners, did you not? A. Yes, sir.

Q. I would like you to name them, or if you wish me to go over your direct testimony for time-saving purposes, I will. I would like to have them straight, if you don't mind. A. Yes, sir.

Mr. Van Riper: What is the page, Mr. Tyne?

Mr. Tyne: Page 1011.

Mr. Van Riper: Thank you.

Q. There was Callahan—I will read them off and you correct me if I am wrong. A. Yes, sir.

Q. Callahan, Coste, Phil White, Arnould, Julius Magyar, a couple of Ben something—those were two individuals, I assume? A. One was Ben Harrington and there was a Ben something else that was with him.

Q. All right. A. I can't recall his last name.

Q. There were a couple of boat captains; do you know who they were? A. Outside of Magyar I can't recall their names.

Q. Well, in addition to Magyar were there a couple of boat (1170) captains? A. Yes, sir.

Q. All right. And you have mentioned Ben Harrington? A. Yes, sir.

Q. Then there was Joe Reinfeld? A. Yes, sir.

Q. Solly Reinfeld? A. Yes, sir.

Q. Sam Reinfeld? A. Yes, sir.

Q. Lou Susskind? A. Yes, sir.

Q. And Lou Holtz? A. Yes, sir.

Q. And in addition there was Kanengiser? A. Yes, sir.

Q. Facher? A. Yes, sir.

Q. Lentz? A. Yes, sir.

Q. Marty Schneider? A. Yes, sir.

Q. And a fellow called Hans? A. Yes, sir.

(1171) Q. (Continuing.) Something? And you went on to testify that there were, there may have been two or three more? A. Yes, sir.

Q. Now, is this a fair statement: That your partners in 1928, I believe you testified, when you went into the Reinfeld group— A. About '27 or '28, about that time.

Q. The latter part of '27, the early part of '28? A. Yes.

Q. The partners totaled 26 and with these few others there would be a total of 29 partners, is that right? A. Yes, sir.

Q. And with yourself going in there there were 30 partners? A. Yes, sir.

Q. Now, will you please tell us, Mr. Rutkin, what percent in this combine each partner had? A. I couldn't tell you that.

Q. Or percentage? You can't tell? A. I will explain that to you, Mr. Tyne. We never, until the closing of Repeal, did ever, even at the close, we never had a meeting of all at any one time, of all the combine, together. Reinfeld would see one combine at the sea shore, then he would see another one here and he would visit another (1172) one and he kept them all in line, but never at any time did they all get together.

Q. Now, I ask you again, Mr. Rutkin, do you know the percentage—strike it out—will you tell us the percentage

that each partner had in this partnership? A. I couldn't tell you that.

Q. You can't give us any idea? A. I could tell you who could—only the partners—

Q. No, you, you. A. No, sir, I could not.

Q. You can't give us an approximate percentage at all? A. No, sir.

Q. Well, have you searched your recollection at this? A. I never tried to.

Q. You never tried to? A. No, sir.

Q. And you went into this—

The Court: Did you ever know the percentages that everybody had?

The Witness: No, sir. Nobody ever knew anybody else's percentage, your Honor.

The Court: Well, who was the one who did know.

The Witness: Nobody ever got any percentage without the direct authorization of Joe Reinfeld, some (1173) people got less at various times and sometimes they got their percentages raised.

The Court: As far as you knew, the only person that knew all of the members' percentages was Reinfeld?

The Witness: Yes, sir, he is the one that gave out the percentages. Nobody got any percentage until it was directly from him.

Q. Did you ever ask Joe Reinfeld what the percentages of the other partners were? A. I don't believe so, that didn't concern me.

Q. It didn't concern you. And in going into that partnership, which you say you put in $60,000, you didn't know what interest any other partner had in it? A. Joe told me he and I—

Q. No, no, please. A. Excuse me. I beg your pardon.

Q. Just answer the question.

The Court: Repeat the question.

(The question read the reporter.)

A. Outside of Joe Reinfeld.

Q. Outside of Joe Reinfeld? A. No, sir.

Q. And you never inquired? A. No, sir.

(1174) Q. Even though you were putting in $60,000? A. No, sir.

Q. Didn't consider it important? A. No, sir.

Q. Did you inquire as to what the assets and liabilities of the combine were when you went into it? A. Yes, sir.

Q. What inquiry did you make and of whom? A. Joe Reinfeld.

Q. What did you ask him? A. I didn't have to ask him, he told me what the assets were, he said approximately a million dollars; most of it was in cash and assets.

Q. All right. A. (Continuing.) And the rest was equipment.

Q. What equipment did he say he had, or the combine had, rather? A. Mainly boats.

Q. Mainly boats? A. Yes, sir.

Q. Didn't he tell you that he had garages and drops? A. Yes, sir.

Q. And that these garages were equipped—as you testified on direct examination—with pits? (1175) A. Yes, sir.

Q. (Continuing.) To store the whiskey? A. Yes, sir.

Q. And how many of these garages did the Reinfeld group have? A. We would shift them, we had as a rule—

Q. When you say "we", whom do you mean? A. The combine.

Q. Yes, the combine after you got in. A. One of the main places we had after that was a place I brought him to, was a friend of Mr. Kanengiser owned it.

Q. Please, Mr. Rutkin, I am asking you how many garages did Reinfeld, the Reinfeld group have before you went in, according to the information he gave you? A. Oh, I don't know; I would guess five or six.

Q. Five or six? A. Yes, sir.

Q. Garages for storage of liquor? A. Yes, sir.

Q. And I believe you testified on direct examination these garages were equipped with pits. A. Yes, sir.

Q. (Continuing.) In which the liquor was stored? A. Yes, sir.

(1176) Q. What did you have to offer the partnership? A. Outlet.

Q. What do you mean by outlet? A. Well, it seemed they had no difficulty in bringing liquor in, they couldn't dispose of it.

Q. They couldn't dispose of it? A. No, sir.

Q. Who told you that? A. Joe Reinfeld.

Q. Told you they couldn't dispose of the liquor that was brought in? A. No, sir.

Q. Do I understand your testimony to be that they could bring it in to shore? A. Yes, sir.

Q. But they couldn't dispose of it after they got it on to shore? A. Yes, sir.

Q. Well, was it stored in these five or six garages? A. Yes, sir.

Q. And they had no buyers down at the docks to take the liquor away, is that so? A. None, never.

Q. Never? (1177) A. So long as I was with that company we never had a buyer at the dock.

Q. I see. So that all this liquor that Mr. Reinfeld had purchased was tied up in these five or six garages, is that right? A. It would never be tied up there, Mr. Tyne, no, sir. They would bring it there and sort it and deliver it as fast as they could sell it.

Q. As fast as they could sell it? A. Yes, sir.

Q. In these garages that Reinfeld had before you came in. A. Yes, sir. And that which was unsold was kept in a hideaway.

Q. That that was unsold was kept in a hideaway. Well, they had plenty of room to store this liquor in a hideaway, didn't they? A. Yes, sir.

Q. Before you came into the combine? A. Yes, sir.

Q. So Mr. Reinfeld wasn't looking for additional garages, was he? A. No, sir.

Q. Didn't you testify on direct examination that that was one of the things that they needed and you furnished? (1178) A. Yes.

Q. You furnished something that wasn't necessary? A. Well, the garages were always necessary, Mr. Tyne, because you lost—you had to keep shifting, you had to keep moving, you couldn't have a permanent place for bootlegging; the minute it got a little hot for some reason or other, they had to move and they couldn't use that. Maybe in a few months they would come back again, and shift it some other place. They might have had six, but in a period of five years they might have used 30 garages.

Q. 30 garages? A. They probably used 30 of them over the period of time.

Q. Did you furnish these 30 garages to Mr. Reinfeld? A. No, sir.

Q. Well, I take it, then, that you were always around Newark supervising things, is that right? A. Most of the time.

Q. And you said that you had the outlet, is that so? A. Yes, sir; one of the good outlets.

Q. One of the good outlets? A. Yes, sir.

Q. What outlet was that? A. Well, one of them was Milwaukee, that was a good outlet I had out there.

(1179) Q. That was the one good outlet you had? A. Yes, sir, it was one of the good outlets.

Q. How many others did you have? A. Oh, a few good ones in New York City.

Q. What do you mean by an outlet? Just what do you mean by that? A. Buyer.

Q. A buyer? A. Buyers of goods.

Q. And would you deliver the whiskey to the buyer in New York or Milwaukee? A. We would send it there.

Q. I beg your pardon? A. We would send it there, ship it there.

Q. How? A. Well, what we shipped to Milwaukee was through the Universal Shipping Company in Newark.

Q. An independent carrier? A. Yes, sir. We used to ship solid cars of different shapes, size of boxes consigned as furniture and machinery in these crates. They would be odd sized crates; we had crates made up especially for us.

Q. Who made them up? A. A lumber company on—oh, a very large lumber company. (1180) down here on Delancey Street.

Q. You put them in crates? A. We loaded carloads of whiskey there and they went directly to that destination in Milwaukee or in Chicago, or wherever I consigned it; or Florida.

Q. Or Florida. And you had all these contacts? A. I didn't have all the contacts, I said those are three of some of those I had.

Q. Some of those you had. A. Yes, sir.

Q. And while you were in by yourself you could sell all the liquor that you could get to these contacts, is that so? A. Well, we would gamble it out there, and I didn't want to gamble that high, and you wouldn't get the money until it got there, if delivery was made.

Q. Well, now, you say that you wouldn't want to gamble, you didn't want to gamble. A. That high for myself.

Q. For yourself. But you could sell all of the liquor, yourself, to these outlets that you had before you went into the combine, couldn't you? A. Yes, sir.

Q. And make at least 25,000 profit a year? A. Yes, sir.

(1181) Q. And notwithstanding that you say that you went into the combine. A. Yes, sir.

Q. And after you got into the combine how much did you make per year while you were in the combine? A. Well, that went up and down. I would say I averaged 80,000 a year.

Q. 80,000 a year? A. That would be a good guess.

Q. For how many years? A. While I was in it.

Q. How many years was that? A. About eight years.

Q. 80,000 a year? A. About seven years.

Q. Did you ever report that in your income tax returns? A. No, sir.

Q. I believe you testified on direct examination that when you went into this combine you got 6%, the same that Joe Reinfeld had, is that so? A. Yes, sir.

(1182) Mr. Van Riper: If the Court please, I have no objection to Mr. Tyne giving information; that is not what the witness, that he got 6% when he went in.

Mr. Tyne: Will you state it, Mr. Van Riper. He just said yes, sir.

Mr. Van Riper: The testimony was yesterday 27½%.

Mr. Tyne: Oh, no, sir.

The Court: Let him clarify it.

Q. Let me ask this question. Didn't you testify yesterday that when you went into the combine you got 6% in the latter part of 1937? A. I believe so, yes, sir.

Mr. Van Riper: If I am wrong about the testimony, I am very glad to retract my statement.

Mr. Tyne: Very gracious.

Mr. Van Riper: Always try to be.

Q. You testified also on direct examination that it was in 1930 that you got 27½%? A. No, sir.

Q. Well, let me finish my question. A. Before that.

Q. Was it before that? Oh, 1929, you are right. You got 27½%. A. Yes, sir.

(1183) Q. And that 27½%—strike that out. You testified that you got 27½% of the combine in 1929. A. Pardon, please.

(Question repeated by the reporter.)

A. Yes, sir.

Q. And just prior to that and in 1929 you went into a 50% arrangement with Joe Reinfeld on this hose operation down in Deal, is that right? A. Yes, sir.

Q. No question about it, is there? A. No, sir.

Q. About the 6% and the 27½% in 1929? A. That's right.

Q. Do you remember testifying in New York starting page 24—do you want to look over my shoulder?

Mr. Van Riper: Yes, I don't have it.

Q. "Directed to you by Mr. Kiendel in New York"—do you remember the testimony? A. Yes, sir.

Q. And you were under oath at that time? A. Yes, sir.

Q. "But this partnership that you refer to began about 1926 when prohibition was in effect. A. Yes, sir.

"Q. And Thatcher was a partner and Kanengiser was a partner (1184) and you were a partner and Reinfeld was a partner. A. Yes, sir.

"Q. Did you have a partnership agreement? A. Yes, sir.

"Q. Was it in writing? A. No, sir.

"Q. No written agreement of any kind? A. No, sir.

"Q. Was there any written memorandum or writing of any kind evidencing such agreement? A. The only one who kept writings in the company was Mr. Reinfeld and his bookkeeper, whoever that was, his son-in-law."

* * *

(1185) Q. (Continuing) "You mean by that, Mr. Rutkin, that this partnership in the liquor business, selling liquor in the United States, all its books, records and writings were kept by Mr. Reinfeld and the bookkeeper son-in-law of his? Answer: Yes, sir.

"Question: You did not keep any of them and you have not any? Answer: No, sir.

"Question: But you tell us this particular partnership agreement was never in writing, there was no memorandum that you knew of in writing that you can tell us about? Answer: No, sir.

"Question: It was entirely an oral arrangement? Answer: Yes, sir.

"Question: It was begun in 1926 and continued thereafter? Answer: Yes, sir."

Did you so testify? A. Yes, sir.

Q. Yes. "Who were the other partners in it than Reinfeld, Kanengiser, Stacher and yourself, if there were any? Answer: Samuel Reinfeld, Solly Reinfeld, Louis Holtz, William Smith, Samuel Lentz, Martin Schneider, Chick Callahan, and another, Felix Arnold, and one deceased.

"Question: By name. Answer: Edward Coste.

"Question. Any others? (1186) Answer: No, that is about all."

Did you so testify? A. Yes, sir.

Q. Yes. "Did you not mention Eddy Seaman? Answer: He was never a partner.

"Question: He was never a partner? And so far as your memory serves you, the names you have given us constituted the entire partnership? Answer: That is right." A. Yes, sir.

Q. "Question: Was it a general partnership or a limited partnership? Do you understand that difference? Answer: No, sir, I do not.

"Question: What was the oral arrangement when you ten or eleven men"—strike it out. "What was the oral arrangement which you ten or eleven men had? Answer: Well, just a partnership. If you and I had sixty percent between us and the six percent, and the other fellow three percent and the other fellow two percent, and so on down the line.

"Question: Give us the proportion. What percentage did you have? Answer: I was an equal partner with Joe Reinfeld.

"Question: What did the others have? Answer: They had various small pieces, small shares. I do (1187) not remember the exact pieces.

"Question: What did Sam Reinfeld have? Answer: His brother Joe always took care of him.

"Question: What was his percentage in the partnership if you know? Answer: I do not remember.

"Question: What was Chick Callahan's? Answer: I do not remember.

"Question: What was Lentz' percentage? Answer: I do not remember.

"Question: Is that true of the others? Answer: I do not remember.

"Question: You cannot tell us what the percentages were? Answer: What their exact percentages were.

"Do you remember the approximate percentages? Answer: They had 5% each, to my best recollection."

Right? A. Yes, sir.

"Question: You mean that each of these nine, including the man deceased, each had 5% interest in this partnership? Answer: Approximately. Some 2%, some 1%, some 2% more, some 1%." That is a correction. Let me read that answer again. "Approximately, some 2% more, some 1% less.

"Question: So it is your best recollection that this partnership consisted of about 11 people, nine of whom each had 5% (1188) interest in it? Answer: Yes.

"And a balance of about 45%— Answer: Yes, sir.

"—was equally divided between you and Mr. Reinfeld? Answer: Yes, sir.

"Question: And is that the partnership arrangement you talked about in your complaint? Answer: Yes, sir.

"Question: Let us see if I can get these figures a little bit more accurately. As I have taken them down here there were nine members you have given us other than Mr. Reinfeld and yourself, Samuel Reinfeld, Solly Reinfeld, Louis Holtz, Samuel Lentz, William Smith, Martin Schneider, Chick Callahan, Felix Arnold and the deceased, who each had an interest? Answer: That is right.

"Question: So all together they had approximately, according to your best recollection, a 45% interest and you and Mr. Reinfeld had the remainder of 55%, is that right? Answer: That is right.

"Question: And the one-half of 55% you had would be 27½% interest in the profits of that business? Answer: Yes."

Did you so testify? (1189) A. Yes, sir.

Q. Was that the truth? A. Yes, sir.

Q. Well, is what you testified here today the truth? A. Well, Mr. Tyne,—

Q. No, please. A. Oh.

Q. Now you have testified, according to this testimony, that in 1926, when you went into the partnership—1926, mind you—when you went into the partnership there were eleven partners? A. Does it specifically say eleven?

Q. Well, they were counted up.

The Court: They counted up to about eleven.

Q. Eleven, nine, twelve—as a matter of fact, I think there were twelve actually mentioned, according to my count. And those eleven or twelve constituted the entire partnership in 1926, and that in 1926 they each had approximately 5%, and that you and Mr. Reinfeld divided the balance of approximately 55%. Didn't you so testify in New York? A. Yes, sir.

Q. And at that time you didn't say anything about a separate arrangement with Mr. Reinfeld.

The Court: Well, I understood you to say here that when you went in you had 6%.

Mr. Tyne: Exactly, that is what I am leading (1190) up to. I am coming to that.

The Witness: Your Honor, the percentages fluctuated so much—

The Court: No, no, no; there is no fluctuation here. You testified flatly that you had 6% when you went in as your share. In New York you testified that you had 27½%, the same as Reinfeld. Now which is true?

The Witness: Well, your Honor, I would have to make—can I make an explanation of that?

The Court: Yes, yes.

The Witness: We were in Montreal, Joe Reinfeld, Eddy Seaman and I. Eddy Seaman was representing the other half of the partnership. We were

just doing business with him. And we were negotiating about a distillery up there—

The Court: Was this after you came in the arrangement?

The Witness: Yes, in 1931.

The Court: No, I am not concerned about that. What I am aiming at now is, you said here this morning that when you went in you had 6% and in New York you said when you went in you had 27½%. Now which is true?

The Witness: Did I in New York say that when I went in I had 27½%?

Q. Exactly; in 1926. A. I beg your pardon. That's an error.

(1191) Q. That's an error? A. Yes.

Q. Well, wait a minute now. We are trying to get at the truth here.

The Court: Wait a minute. He said, "That's an error."

Q. Well, you realized that you were under oath then, is that right? A. Yes, sir.

Q. And you say that that testimony in New York is now in error? A. Yes, sir.

Q. And your testimony before this jury is true? A. Yes, sir.

Q. Did you testify in New York, at all of this testimony here, about any interest in the Holtz operation and deal? A. No, sir, I don't believe so.

Q. And you based your 27½%, as you testified to in New York, on your interest in the partnership when you went in in 1926.

Mr. Van Riper: Is that a question, if your Honor please?

Mr. Tyne: That's a question.

Mr. Van Riper: I think that's a statement. I object to it.

Mr. Tyne: It is a question.

(1192). The Court: What is the question?

Q. Isn't that so? A. Will you read that question?

(Question repeated by reporter.)

A. Yes, sir.

Q. And under oath then in the testimony, when you were testifying here in connection with this partnership, which was a couple of years ago, you did testify there was 27½%, did you not? A. Yes, sir.

Q. And that was two years ago. Now was your mind clearer two years ago—clearer two years ago—or is it clearer today? A. Just as clear.

Q. Just as clear? A. Yes. That was just an error.

Q. Just an error? A. Yes, sir.

Q. Well, did you make any other errors, now before we proceed, that you want to correct? A. No, no.

Q. All right.

The Court: Please, if you have anything you want to contradict, that he has said here today, produce it there.

Mr. Tyne: All right.

(1193). The Court: But you don't want to retry that case here.

Mr. Tyne: All right.

Q. Now you testified, I believe, that all of the partners continued in this partnership arrangement up until the time of Repeal, isn't that so? A. All of them?

Q. Yes. Wasn't that your direct testimony? A. Well, if it was, that was an error. I know of a few that didn't continue on.

Q. Well, now— A. The one you mentioned—you refreshed my memory when you mentioned Willie Smith. He was a partner and he didn't continue on.

Q. Well, then, you say that was an error? A. I didn't recall his name. That part of the testimony was important that you just read through.

Q. Who do you say dropped out of the partnership? A. One was William Smith.

Q. Who else? A. Another one was Ralph Rosensteel, another was—well, you know about him, he died; a fellow—

Q. That's Coste. We are not counting him. A. A fellow called Dutch Whitey—Harry Linden.

Q. Harry Linden. Is that all? (1194) A. There may have been two or three more. I didn't keep track of that. I told you one man kept track of that. People got out and came in. That was Joe Reinfeld.

Q. Now, wait a minute. You have testified to the partners who were in this partnership and that they continued in the partnership. I am going to read your testimony—

Mr. Van Riper: What page?

The Court: Now, is it something that you are going to contradict that he has testified to here?

Mr. Tyne: Yes, sir.

The Court: All right.

Q. I think, to be fair about it, you said there were three, four or five dropped out, is that so? A. There may have been four or five.

Q. Four or five? A. Yes, sir.

Mr. Van Riper: May I have the page, Mr. Tyne?

Mr. Tyne: Yes, Mr. Van Riper. 1037.

Mr. Van Riper: Thank you.

"Question: I see. Do you know what partners stayed in Browne Vintners, what partners of the combine stayed in Browne Vintners. Answer: Yes, sir.

"Question: Who? Answer: I believe everybody stayed in except Maygar,"—

(1195) Mr. Van Riper: Now, pardon me, if the Court please, that is not a contradiction of what he was just asked. I certainly understood the question that Mr. Tyne was just asking was whether or not they stayed in the combine, meaning the bootlegging combine.

Mr. Tyne: No, no.

Mr. Van Riper: Not in the Browne Vintners.

Mr. Tyne: No, no.

The Court: Well, suppose you clarify that.

The Witness: That is what we were discussing at the time when I told you—

Q. No, I will ask the question. A. Thank you.

Q. You say that everybody, all the partners, stayed in, those that you have enumerated here today, stayed in the partnership and entered Browne Vintners, the combine, had an interest in Browne Vintners; is that so? A. If I said that I am in error. I didn't know if they had a partnership in Browne Vintners. They stayed in, most of them, with the exception of those three or four, until the end of prohibition.

The Court: Well, how many in the original combine dropped out of the bootlegging operation before prohibition was ended?

The Witness: I don't know if any of the (1196) combine dropped out. You see, your Honor, when we stopped, when we amalgamated in '30, the other people, we stopped pulling at the shores and beaches

and we used to land steamers of whiskey with 25,000 and 30,000 and as much as 40,000 cases at a dock, right in Newark.

The Court: Where?

The Witness: In Newark.

The Court: In Newark?

The Witness: And Hoboken and in New York City.

The Court: 40,000 cases? Go right up to a dock?

The Witness: Yes, sir.

The Court: All right.

Q. When was that?

The Court: He said that was after '30, after the combination of the groups that the—which groups are they?

The Witness: The Seaman, Zwillman group, and we got together.

The Court: The Seaman, Zwillman and the Reinfeld group?

The Witness: Yes, sir. And then the shore people, some of them were cut down by Joe Reinfeld, so I saw very little of them after that.

Q. How often would you? A. We didn't go down—pardon me.

(1197) Q. How often would you deliver 40,000 cases to a dock?

The Court: He started with 25,000.

The Witness: I said 25, I said 20 to 40, I think. The 40,000 we lost was when Mr. Susskind told a boat to come in instead of stay out. He made a mistake. I would say about once a month?

Q. Once a month? And would pile it up on the dock? A. No, sir. As fast as they could load the trucks they would go out.

Q. How long would it take you to get rid of 40,000 cases? A. Sell them?

Q. No, to get them—

The Court: To take them off the ship?

A. To take them off the ship? Four, five hours.

Q. How many men working? A. Two or three hundred.

Q. Two or three hundred?

The Court: Yes.

Q. Were they in the combine, too, those people? A. No, sir, employees.

Q. Employees? A. It came in very handy for them. It was depression time.

Q. Yes. Now you say it was in 1929 that you entered into a partnership with Joe Reinfeld in connection with this patent that you had? A. Yes, sir.

(1198) Q. I believe you testified that you wanted to get out of this combine, didn't you? A. Yes, sir.

Q. Making 80,000 a year you wanted to get out? A. Yes, sir.

Q. More time for the movies? A. (No response.)

Q. You wanted to operate it yourself, is that so? A. Yes, sir.

Q. You testified that you had this patent consisting of a hose, a length of hose and a boat. A. Yes, sir.

The Court: You don't mean a patent formerly entered in the United States Patent Office, do you?

The Witness: No, sir.

Mr. Tyne: That is what I was leading up to.

The Court: I just wanted to find out what the witness means. Just a contraption of his own, a little private Rube Goldberg contraption.

The Witness: Rube Goldberg contraption.

Q. It was a sort of Rube Goldberg contraption, wasn't it? A. It was a very simple operation in operation, very simple.

The Court: Not very complex?

(1199) The Witness: That's right.

Q. And prior to the time that you took Joe Reinfeld into this had you been operating this Rube Goldberg thing? A. No, sir.

Q. You had not? A. No, sir.

Q. When did you start to operate it? A. I would say some time in 1929.

Q. What part of 1929? A. Well, it might have been the early part or the latter part.

Q. Do you know whether it was the early part or the latter part? A. I wouldn't recall.

Q. You don't recall at all? A. No.

Q. Time is not important. And your equipment consisted of a tank boat a hundred and ten feet long? A. About approximately.

Q. And hose? A. Yes.

Q. Rubber on the outside and linen on the inside? A. Yes, sir.

Q. I believe you testified that you had three houses down (1200) in Deal, New Jersey? A. Yes, sir.

Q. And you commenced operations in this connection some time in 1929? A. Yes, sir.

Q. And you did bring in liquor, did you not, in these tank boats? A. Yes, sir.

Q. And the liquor in these tank boats was siphoned off from the boat to oaken vats in these three houses, is that right? A. Yes, sir.

Q. And I believe you testified that this operation would only be carried on when the weather was exceptionally bad, is that right? A. Yes, sir.

Q. When the water was rough? A. Yes, sir.

Q. And the Coast Guard couldn't go out? A. Yes, sir.

Q. In the small boats? A. Yes, sir.

Q. It had to be raining or something like that, didn't it? A. No, it didn't have to be raining.

(1201) Q. It had to be a rough night, the water too rough, prohibiting the Coast Guard from going out? A. Yes, sir.

Q. And this boat would come down without lights? A. Yes, sir.

Q. And that you put in the deck of one of these three houses a light? A. Yes.

Q. A beacon light, is that right? A. Yes.

Q. And I think you said it was red. A. Yes, sir.

Q. And that light identified the particular house or the place where the liquor was to come in? A. Yes, sir.

Q. I believe you also testified that you and Lou Holtz went out in a dinghy or small boat. How big was that? A. Oh, about 20 feet.

Q. How much? A. 20 footer.

Q. 20 footer? A. Yes, sir.

Q. That's the size of a lifeboat, isn't it? A. No, this was a little larger than a lifeboat, had an (1202) engine on it.

Q. Did you put off from the beach? A. No, Shark River inlet.

Q. Oh, you came down from Shark River inlet? A. Yes, sir.

Q. You didn't put out from Deal, is that right? A. No, sir.

Q. Well, when you expected a tank boat down without lights did you go up from Shark River to Deal? A. Yes, sir.

Q. With or without lights? A. We used to leave in the daytime and pull out of the inlet and go down toward Matawan and as it got darker we would keep going out to sea and when it got dark—it was just Lou Holtz, I am the captain, the same captain each time, we would head out and as it got dark we would put the lights out and come back and head north until we would get out there off the house and we would lay there close to. I can check them dates. One night we were arrested by the Coast Guard and we were towed into Staten Island.

Q. One of those rough nights? A. Yes, the Coast Guard got out that night but the tank boat fortunately didn't come in yet and they didn't get their signal—I can tell you the name of the captain, (1203.) Captain Schmidt of the Coast Guard.

Q. Where was he stationed? A. He towed us—we want aboard the Coast Guard boat and he towed our boat into Staten Island.

Q. What happened there? A. We were placed under arrest, Lou Holtz, I and the Captain.

Q. Then what happened? A. We were arraigned before a U. S. Commissioner.

Q. Where? A. Right there, Staten Island.

Q. Staten Island? A. Yes, sir.

Q. What was the name of the Commissioner? A. I do not remember.

Q. What happened after that? A. The charge was running without lights.

Q. Running without lights? A. Yes, sir.

Q. What time was it when you were picked up?

The Court: Well, I prefer not to try him for violation of the lights.

Q. That was the only time you were picked up? A. Yes, sir.

Q. Now, how many times did you carry on these operations? (1204) A. I would say about eight or ten times a year.

Q. Eight or ten times a year for how many years? A. Twenty-nine until thirty-three or thirty-four.

Q. '33 or '34? A. That's right.

Q. And how much liquor would you bring in on each occasion? A. I believe it was 20,000 Canadian gallons.

Q. I believe you testified yesterday it was 25,000 American gallons. So that it was eight times a year and did you continue from 1929 to '33, four or five years? A. Yes, sir.

Q. You brought in this boat here 32 times, something like that? A. I figure about that.

Q. You figure about that? A. Yes, sir.

Q. Where would this tank boat come from? A. St. Pierre Miquelon.

Q. St. Pierre Miquelon? A. Yes.

Q. He would come all the way down from St. Pierre Miquelon and come into this place there without lights, is that right? (1205) A. Yes, sir.

Q. And would be able to find this particular house in Deal? A. Yes, sir.

Q. Was it the same boat all the time, the same captain who was familiar with the route? A. The same captain, but we had two boats.

Q. You had two boats. Oh. A. If we had one tied up or something happened to one we used the other.

Q. Who were the captains of these boats? A. Lou Holtz took care of that.

Q. Do you want to rely on Lou Holtz for that? A. I can bring you the boatyard owner from Nova Scotia.

Q. The boatyard owner is going to testify to these operations?

Mr. Van Riper: If your Honor please.

The Court: No, no, no.

Q. I believe you testified it was a stormy night and it was there that this 110 foot boat would put in within 100 yards of the shore, right? A. Yes.

Q. You testified that you would go out with the boat—you didn't testify that you put out at Shark River yesterday, (1206) did you? A. It is not so important, no, sir.

Q. That is an error?

Mr. Van Riper: No, your Honor please, he didn't say it is an error.

Mr. Tyne: Well, he said it is not so important.

Q. And you would take the hose out with you, wouldn't you, you testified to that? A. No, sir.

Q. Would the hose be on board the boat?

The Court: Mostly on land. It would be taken out in a dinghy, wouldn't it, one end?

The Witness: They had a rope attached to the dinghy and would be out there, we would pick the rope up and then take it out to the boat and the crew on board the boat would tow the hose out.

Q. Didn't you testify yesterday that you would be pulled in by the crew on the shore in your boat after you made contact with the tank boat? Didn't you so testify?

The Court: Please ask a new question.

Q. Didn't you testify yesterday that there was a rope attached to your boat, the boat in which you put out to the tank boat, and when you got the hose aboard you would be pulled in to shore?

(1207) The Court: No, I don't think that was the testimony.

A. I know exactly how it was done, Mr. Tyne. There is nothing I want to conceal from you. I want to tell you everything I know.

Q. Well the hose was attached to the boat.

The Court: The hose was carried out, tied up and then the booze was taken into these tanks.

Q. How many feet of hose did you run out to this tank boat? A. Well, I think we had enough lengths to make 500 feet and allow for slack and stuff, five or six hundred feet. We had more than enough hose.

Q. Where was the hose from? A. The hose ran right under the ground right into the cellar.

Q. Well, it ran out in the water, didn't it, and rested on the bottom? A. Yes, sir.

Q. And then right into the cellar? A. Yes, sir.

Q. And it was pumped into these vats? A. Yes, sir.

Q. Some five hundred feet of hose? (1208) A. Yes, sir.

Q. Now, where were these houses into which the liquor was pumped and into these vats, where? I want you to tell me specifically where they were? A. I cannot tell you the street, I don't know.

Q. You don't know? A. No.

The Court: They were beach front houses, were they?

The Witness: No, sir; the first one was a beach front house and then we had one, two, three, four houses.

Q. Running back from the beach?

The Witness: Running back diagonally.

The Court: From the beach?

The Witness: Yes, sir.

The Court: And were the tanks in these houses connected?

The Witness: Yes, sir. And they had valves coming from one to the other and from house to house.

Q. Now, I want you to tell me where in Deal these houses were.

The Court: Well, what difference does it make? They were in Deal some place.

Mr. Tyne: It is very important, sir, I think.

(1209) The Court: What is the importance?

Mr. Tyne: Well, I want to identify them for rebuttal purposes.

The Court: All right.

Q. Tell us where those houses were, Mr. Rutkin. A. I don't remember the street.

Q. You don't remember the street? A. No, sir.

Q. Whereabouts in Deal were they? A. I couldn't answer that.

Q. You have no idea? A. No, sir, I can go down there and recognize them.

Q. No, you were down there for four, three—well, from 1925 to Repeal and you were down there some eight or ten times a year. A. Yes, sir.

Q. And you installed these vats? A. Yes, sir.

Q. And you attached the hose? A. Yes, sir.

Q. And you put in the light. Now, I want you to tell me where in Deal they were. A. Well, I couldn't give the exact location.

The Court: You don't know the name of the street?

(1210) The Witness: No, sir, I can find out.

The Court: You can find out the name of the street?

The Witness: Yes, I can find out.

The Court: Suppose you do that.

The Witness: Yes, sir.

The Court: All right, go ahead.

Q. You will find out? A. Yes, sir.

Q The exact location of the houses? A. Yes, sir.

Q. And let me know where they are? A. Yes, sir.

Q. Before we conclude this trial A. Yes, sir.

Q. And all during this operation included in this the weather continued to be rough, is that so? A. Yes, sir.

Q. And this boat that you say was 100 yards off shore—approximately 300 feet— A. Yes, sir.

Q. That is where the big combers, the breakers would come in, isn't that so? A. No, they would come in a little more this side. (1211) We would get a little beyond that.

Q. You would get a little beyond that? A. Yes, sir.

Q. And despite the fact that this was a rough night and these combers and breakers were coming in there you would carry on this operation? A. Yes, sir.

Q. And that was the operation that you say you went into with Mr. Reinfeld on a 50-50 basis? A. Yes, sir.

Q. How long did that operation continue? A. We brought in one load that way.

Q. One load? A. Yes, to see how it would work. Lou had it made and he knew it would work out successfully to sell the liquor and so on and we had a conference about it and there was no harmony in the combination. Joe's brothers weren't very happy so we made a different arrangement and then we made a different arrangement after that, too.

Q. I see. And then you were going to continue that operation yourself, isn't that right? A. No, sir.

Q. And I think you said that Joe Reinfeld said "Well, don't go out of the partnership" this was in 1930, was it? (1212) A. In 1929.

Q. 1929. "Don't go out of the partnership, take a 27½% piece of the combine" is that so? A. Yes, sir.

Q. Did you put any more money in the combine? A. No, sir.

Q. You did not? A. No, sir.

Q. You added nothing more to it except this patent of yours, is that so? A. Yes, sir.

Q. Now, did you attend to that particular operation? A. Yes, sir.

Q. Exclusively? A. No, sir.

Q. Who else? A. There was only four of us, I believe Lentz was only there one tour; Joe Reinfeld, Lou Holtz, myself, Martin Schneider and that's all—a couple of employees.

Q. A couple of employees. How many would that make, six or eight? A. Probably.

Q. And they were the only ones on the scene during the time this operation was being carried on? (1213) A. Yes, sir.

The Court: I think we will take a recess for five minutes. The Jury will be excused first.

(Whereupon a short recess was had.)

(1214) Q. Mr. Reinfeld—Mr. Rutkin, rather, before I forget it, will you be able to get the addresses and locations of those three houses you referred to in Deal by the time we reconvene the afternoon session?

The Court: Get it as soon as you can.

The Witness: As soon as I can; by tonight.

The Court: That doesn't mean next Friday a week.

The Witness: I am sure by tonight I can have it.

The Court: All right.

Q. I think you testified you made $25,000 a year when you were operating and you made $80,000 a year after you entered the combine, is that right? A. Yes, sir.

Q. That was on the basis of 6% or 27½%? A. Well, my answer to that would be both, the moneys come in about the same regardless of what share I had.

Q. Well, let's see. Regardless of whether you had 27½% or 6% you got the same money, is that right? A. Approximately.

Q. Well, you earned $80,000 a year when you had a 6% interest, is that right? A. Yes, sir.

Q. And you earned $80,000 a year—I won't say earned—you took out $80,000 a year when you had 27½% interest? A. Yes, sir.

(1215) Q. So it didn't fluctuate at all? A. Very little.

The Court: Well, why would that be, because of fluctuation of receipts?

The Witness: I had the 27½% for a short time, only until the following year, until 1930.

The Court: Well, still my question is, if the return on your 6% and your 27½% were about the

same, was that because of the fluctuation in the amount of money, the amount of profits received?

The Witness? Yes, sir.

Q. Well, were the profits reduced, then, in 1930, when you inaugurated this patent operation? A. Greatly.

Q. Greatly? A. Yes, sir.

The Court: Why was that?

The Witness: There was so much liquor and it was so easy to bring it in that the market took quite a drop, the price, the selling price.

The Court: Then that wasn't such a smart invention, was it?

The Witness: No, sir—it was and it wasn't.

Q. Do you attribute that to your invention that you referred to, this hose contraption? (1216) A. No, that applied to case goods, also.

Q. It applied to case goods, also? A. Yes, sir.

Q. Was it because of competition generally? A. Yes, sir.

Q. Well, did this $80,000 a year that you received continue until the combine broke up? A. Well—yes, sir.

Q. All right. When did the Zwillman group come into the combine? A. 1930.

Q. And the Zwillman and Stacher group got a 50% interest in the combine, didn't they? A. We divided with them; they had 100% company and we had a 100% of our company, and it was put together, so all our percentages were cut in half.

Q. The percentages were cut in half? A. For everybody.

Q. Yes. And notwithstanding the fact that this new combine came in, you still continued to make $80,000 a year? A. We were bringing in a lot more liquor.

Q. Well, you just testified that there was so much liquor in the market and it was so easy to bring in that the price dropped. A. Yes, sir.

(1217) Q. Yet now you are testifying that you brought in so much more liquor. A. Yes, sir.

Q. Is that so? A. Yes, sir.

Q. And you were able to dispose of it? A. Yes, sir.

Q. Even though, as you testified, there was plenty of liquor around before this combine of yours joined up with the Zwillman-Stacher group? A. Yes, sir.

The Court: Well, what was your percentage after Zwillman got in?

The Witness: For a short—

The Court: As I figured it, about 13¾%.

The Witness: For a short time thereafter.

The Court: For a short time. Then did it vary again?

The Witness: Then it varied again.

The Court: What was that for?

The Witness: Mr. Reinfeld figured out that from the whiskey proposition, he said, "That is a very good idea". He said he and Lou Holtz figured out that they can bring in steamers of alcohol the same way.

The Court: You mean using the hose proposition?

(1218) The Witness: On the same idea.

The Court: Yes.

The Witness: And we eventually went to Europe and bought two steamers, Lou Holtz, Joe Reinfeld and I, and we put in one steamer in England, on the Tyne—we bought the steamers in Hamburg—

Q. You say on the River Tyne? A. Yes, sir.

Q. Spelled T-y-n-e, too? A. Yes, sir.

The Court: But they were bought in Hamburg. How much did you pay for them?

The Witness: I believe around five or six hundred thousand for both, for both of them. And we had them equipped, one with a 600,000 gallon tank and one with a 500,000 gallon tank, with baffle plates so she wouldn't capsize.

The Court: You bought that. And how did that change the percentage?

The Witness: Mr. Reinfeld got a fellow by the name of Ben Zuckerman to run the alcohol division of the company.

The Court: That is, the bootlegging company.

The Witness: Yes, sir. And that is when a new combination came in with our group, the whole group, that 1219) was the Zuckerman group. He had some associates running that.

The Court: Then you had three groups, the Reinfeld, the Zwillman and the Zuckerman groups, is that right?

The Witness: But the Zuckerman group was only affiliated with the alcohol.

The Court: But with Zuckerman were also affiliated the Zwillman and the Reinfeld groups?

The Witness: Yes, sir.

The Court: Then so far as the whiskey was concerned, you had the two groups without Zuckerman?

The Witness: Yes, sir.

The Court: All right. Well, now, that didn't affect your share in the Reinfeld-Zwillman group?

The Witness: Yes, sir.

The Court: How?

The Witness: Well, I didn't like that. I didn't believe that would be successful, I was against it, and they sold, I think Zuckerman bought 15 or 18% of his group, of the entire group. You asked me a question and I answered that improperly, your Honor. Zuckerman had the entire thing, I think it was 15 or 18%.

The Court: So when you finally disapproved of the two separate entities, it all became one and the alcohol (1220) and the liquor business were combined?

The Witness: Yes, sir.

The Court: So that the Zuckerman group had a 15%—

Mr. Tyne: 18.

The Witness: Something like that, 15 or 18.

The Court: —15 or 18%, and that reduced the percentage of everybody else.

The Witness: Everybody; more so me than anybody else because I sold a piece of mine on top of that.

The Court: You sold a piece of it?

The Witness: Yes, I didn't want it.

The Court: What was the piece you sold?

The Witness: I don't recall; I think it was 5, 6 or 7% of mine.

The Court: You sold that to Zuckerman?

The Witness: Well, I made a deal with Reinfeld and he made a separate deal with Zuckerman and that group.

The Court: Well, to whom did you sell your 5 or 6%?

The Witness: To Joe.

The Court: To Reinfeld?

The Witness: Yes, sir.

The Court: That left you with 22% in the original thing, which was then reduced because of the bringing in of (1221) the Zuckerman group to what?

The Witness: I think I was about to where I was, back to where I started, about 6%.

The Court: 6%?

The Witness: Yes, sir. I recall now, he gave me 75,000, I think, 75,000, that was it, for 7½%, or 7¾, or something like that.

By Mr. Tyne:

Q. Do I understand your testimony, when the combine terminated you had 6%? A. Yes, sir.

Q. (Continuing.) In the combine? A. Yes, sir.

Q. And you say that that carried over into Browne Vintners? A. Yes, sir.

Q. Now, when the combine terminated were you paid out your capital investment of $60,000? A. Well, I don't recall, Mr. Tyne; I think we just kept taking a profit down. I don't recall. I got a lot more than that out at that time.

Q. When you were—when the combine terminated, my question is, Mr. Rutkin, did you get out your $60,000? A. No, sir.

Q. You did not? A. No, sir.

(1222)

Q. Did you get your percentage out before the partnership wound up, $60,000?

Mr. Van Riper: Now, if the Court please, I have no objection to the witness answering the question if it is made clear whether we are talking about profits or return of capital investment.

Q. The $60,000— A. That was never mentioned, Mr. Tyne.

Q. Never mentioned? A. No, sir.

Q. I take it, then, you didn't get it back. A. I got a lot of money back.

Q. Well, did you get your $60,000 investment back? That is what I am asking you. A. We didn't operate that way.

The Court: No. Did you get it back or didn't you?

The Witness: No, sir.

The Court: All right.

Q. Do you remember being asked this question—

(1223) The Court: Where?

Mr. Tyne: At page 252.

Do you want to read it, Mr. Van Riper?

The Court: Where, here?

Mr. Tyne: In New York. I hadn't finished the question, sir.

Q. (Continuing.) New York testimony: "What became of the $60,000 capital you put in the business? Did you ever get that out when it wound up? "A. Oh, I got that out long before it wound up". A. In profits, yes, sir.

Q. Now, Mr. Rutkin, you were asked about the $60,000 capital you put into the business: "Did you ever get that out when it wound up"? You answer: "Oh, I got that out long before it wound up". A. Yes, sir, that is true.

Q. "Question: You got that out long before it wound up? Answer: Yes, sir". A. That is true.

Q. So you did get it back, didn't you? A. Yes, sir, many times over.

Q. No, your capital, not your profit. A. Mr. Tyne—

Q. No, please answer the question. A. I can't answer that, we did not operate that way. They (1224) operated that way in legal businesses; we didn't operate that way. Nobody ever got out their capital, they got what was left according to what percentage they had. That is what they got out at the end. All they did was draw down a profit.

Q. Did the others get their capital out, other partners? A. I don't believe anybody, I don't see how anybody could, unless they sold out and took whatever they had coming down.

Q. Did you get an accounting of the partnership when it wound up? A. From Joe Reinfeld?

Q. Yes. A. Pardon?

Mr. Tyne: Will you read the question?

(Question read by the reporter.)

A. Yes, sir.

Q. And did you get a statement of your position in the partnership? A. I don't believe so.

Q. You don't believe so? A. No, sir.

Q. Isn't it a fact that when the partnership broke up it was brought to your attention that you were $35,000 in the red because you had overdrawn? A. That is not so, sir.

(1225) Q. That is not so? A. No, sir; if I may explain that, Mr. Tyne, it is very simple.

Q. No, you just answer the questions. A. Yes, sir.

Q. You say that you got an accounting of the partnership when it broke up? A. No, sir.

Q. You did not? Did you get an accounting at any time prior to the time it broke up A. No, sir, nor did anybody else, any of the other partners.

Colloquy of Court and Counsel

Q. Do you remember being asked this question in the New York case, the testimony on page 66: "Did you get any accounting of the partnership any time from 1928? Answer: Accounting of the partnership at any time?" "Question: Yes. Answer: Yes, in writing." "Question: In writing? Answer: Yes, sir."

Mr. Van Riper: Have you finished?

Mr. Tyne: I have finished.

Mr. Van Riper: If the Court please, I object because the witness was asked if he got an accounting at the time it broke up and he said he didn't think so. The question he was asked in New York: Did you get it any time?

(1226) Mr. Tyne: And that is the question I asked him before I read the New York testimony.

The Court: Will you read that?

(The Reporter read as follows: "Question: You did not. Did you get an accounting at any time prior to the time it broke up? Answer: No, sir, nor did anybody else, any of the other partners.")

Mr. Van Riper: That is prior to the time it broke up.

The Court: Yes, he said no.

Mr. Van Riper: Yes, sir, that's right.

The Court: That is the question asked by Mr. Tyne of the witness here.

Mr. Van Riper: Yes, sir.

The Court: Did he make a statement at any time before the combine broke up, and he said no; now, in New York he said he did.

Mr. Van Riper: No, the question in New York was did he get it at any time, the word "before" was not used in the New York testimony. That is the difference.

The Court: Are you contending that he got this after?

Mr. Van Riper: Yes, sir. He testified yesterday—he produced a sheet—he testified yesterday he got an accounting afterwards.

(1227) The Court: Read the New York question to me, will you, please?

Mr. Tyne: "Question: Did you get any accounting of the partnership at any time from 1928?

"Answer: Accountings of the partnership at any time?

"Question: Yes.

"Answer: Yes.

"Question: In writing?

"Answer: Yes, sir."

The Court: Go ahead, what else?

Mr. Tyne: That's all.

The Court: Nothing else there?

Mr. Tyne: No.

Mr. Van Riper: Oh, I beg your pardon.

The Court: What are you begging my pardon for?

Mr. Van Riper: I beg your pardon now. I meant to beg the District Attorney's pardon when he says there isn't anything else there about it.

The Court: What is there?

Mr. Tyne: Well, all right.

"Question: Do you have them with you?

"Answer: No, sir.

"Question: Where are they?

(1228) "Answer: I may have them; I will look them up.

"Question: You may have to look for them where?

"Answer: At home.

The Court: Well, I shall allow the jury to draw whatever inferences are proper to be drawn.

Mr. Tyne: All right.

The Court: Go ahead.

Mr. Tyne: I will have to come back to this, I can't find it at the moment.

The Court: All right.

Mr. Tyne: I will ask the witness a question, I can't find it in the testimony.

Q. Now, I ask you whether or not, just to make it pertinent here, whether or not it was called to your attention that you were $35,000 in the red at the time the combine broke up and you very emphatically denied that; is that so? A. Yes, sir.

(1229) Mr. Tyne: Page 253.

Q. "Question: Do you remember when this arrangement ended, in 1933 or '34, that you had actually overdrawn over $35,000?"

"Read the question".

"The question was read by the Reporter".

"Answer: I do not remember that.

"Question: Let us see if I can refresh your recollection a little bit about it. Do you remember when the wind up came and you had a conversation with Mr. Reinfeld about your interest in him showing him a slip Mr. Kanengiser prepared showing that you had drawn out? I do not mean drawn out secretly but had drawn out $35,000 more than was coming to you?

"Answer: No, sir.

"Question: Do you remember talking to Mr. Kanengiser about that?

"Answer: No, sir."

The Court: Well, that doesn't contradict anything he says here.

Mr. Tyne: He said he didn't remember.

Q. You produced certain papers here at this trial, did you not? A. Yes, sir.

(1230) Q. I show you D-9 in evidence and ask you when you received that into your possession. A. This was right after—it was some time between Browne Vintners forming and when we put in the second payment of a half million dollars.

Q. Well, when would that be? A. Well, to my best recollection, it could have been '34 or '35 or '36?

Q. '34, '35 or '36? A. Yes.

Q. You can't give us any better period of time than that? A. You see, Mr. Tyne—

Q. No, can you give us any better period of time than that? A. I don't want to be evasive, Mr. Tyne, but it was such a casual thing, that I had no reason to and there is no date on it, no reason to specify the thing. In fact, I am surprised I still have it.

Q. Yes, I am surprised too. Can you tell us whether it was '34, '35 or '36 A. Yes, sir.

Q. Can you tell us whether it was any one of those years? A. No, sir.

Q. It could be any year?

Mr. Van Riper: You mean any of those years.

(1231) Mr. Tyne: I beg your pardon?

Mr. Van Riper: I don't want to object, but you said it could be any year.

The Court: Any of those years.

Mr. Van Riper: I think you mean any of those years.

Q. Could it be any year other than those that you have mentioned? A. I don't think so.

Q. You don't think so? A. No, sir.

Q. Now, I show you D-11 in evidence and ask you when you got that paper. A. I have got this date on, right here; on December 4, 1942, from Joe Reinfeld.

Q. You got that from Joe Reinfeld December 4, 1942? A. Yes, sir. That's the date he gave me the $20,000.

Q. So you had D-9 in evidence in your possession anywheres from '34, '35 or '36 up until the present time, and you had D-11 in evidence in your possession all the time from December 4, 1942 up to the present time? A. Yes, sir.

Q. You were asked in the New York case, were you not, whether you had any papers, correspondence, memoranda, of or (1232) pertaining to the partnership agreement? Were you not? A. Yes, sir.

Q. And any paper, memoranda and so on relating to any transactions you had with Reinfeld or any of the other defendants in the New York suit; is that right? A. Yes, sir.

Q. And at that time you said that you could not find any, you did not have any, isn't that so? And I am going to refer to the testimony—

Mr. Van Riper: Well—

The Court: Let's get the question and answer.

Mr. Tyne: All right. I will start with the Notice to Produce and carry it through.

Q. You were given a Notice to Produce certain papers, were you not, relating to the partnership? A. Any papers.

Q. Any papers? A. Yes, sir.

Q. Any papers whatsoever? A. Yes, sir.

Q. And these papers would come within the meaning—can we stipulate that?—of that Notice to Produce?

The Court: Well, he was told to produce all papers that had a bearing or relation to this matter.

(1233) Mr. Tyne: All right.

Q. Now, you were asked this question: "Mr. Kiendl, I call for the production"—and I am quoting from it—"of all correspondence, writing and memoranda passing between the plaintiff and any of the defendants.

"Do you recall that? Answer: Yes, sir.

"Have you produced any such correspondence, writings or memoranda?

"Mr. Fried: I object to the form of the question. It presupposes there are such writings. I think you should first find out if there are any.

"Mr. Kiendl: I will reframe the question.

"Q. Have you any such correspondence, writing or memoranda? Answer: I believe so.

"Which passed between you and any of the defendants? Answer: I believe so.

"Have you it here present? A. No, sir.

"Do you know where it is? Answer: At home.

"Question: Why did you not produce it today? Answer: I didn't think it would be necessary.

"Question: You thought you could produce it at your convenience? Answer: I was not certain. I just looked over a lot of (1234) my effects, I didn't go over them all, but I know I had certain papers.

"Question: You had this notice since almost three weeks, now, didn't you?"

The Court: Well, how does that contradict anything he has said here?

Mr. Tyne: Well, let me follow it through, sir.

Q. Well, at any rate, you didn't produce any at that time? A. No, sir.

Q. You remember that litigation, don't you? A. That's right.

James Rutkin—Defendant—Cross

Q. Then at a later date you were asked, by Mr. Kiendl, 163, "I am going to ask you whether you have in your possession any books of account, records, any memoranda pertaining to this alleged partnership between you and Mr. Reinfeld. Answer: No, sir.

"Question: Have you any such books of account or records or memoranda under your control? Answer: No, sir.

"Question: Have you made a search for such books, accounts, records and memoranda regarding this partnership? Answer: Yes, sir.

"Question: Have you found any? Answer: Not yet.

"Question: You had from Thursday of last week, was it? (1235) Answer: Yes, sir.

"Question: Until today; you have to the best of your ability made a thorough search. Answer: That is right.

"Question: And so you have been unsuccessful in finding any? Answer: That is right."

And then the question was asked:

"Is there any other place you have to look to discover those books of account, those records or memoranda? Answer: Yes.

"Question: Where? Answer: At my daughter's house.

"Question: Where is your daughter's house? Answer: At Belmar, New Jersey.

"Is that daughter married? Answer: Yes, sir."

(Mr. Van Riper addressed Mr. Tyne aside.)

Q. (Continuing.) "Is that daughter married? Answer: No, sir."

The Court: There is a difference.

Q. Then you were later asked, "Have you any"—page 167—"Have you any records under your control anywhere? Answer: Not that I can find right now.

"Question: Have you made a search for any such records? Answer: Yes, sir.

"Question: And do you think there are other possible sources that you can reach to find such records? Answer: (1236) Yes, sir.

"Question: Are these sources your daughter's house again?"

The Court: Mr. Tyne, how does that contradict anything that has come out here today?

Mr. Tyne: Well, I am going to show, your Honor, that this question was pressed and pressed and pressed and this witness finally said that he couldn't find a single scrap of paper.

The Court: All right. Then he said that since then he went looking for his Army discharge and he couldn't find his Army discharge and he found these other things.

Mr. Tyne: Well, of course, I think it is a matter of credibility, sir, and that's why I am introducing it.

The Court: I know, but the purpose of reading that testimony is to show a contradiction.

Mr. Tyne: Yes, sir.

The Court: Not to test his credibility.

Mr. Tyne: Well, that's the ultimate effect of it.

Q. Let me ask you: Where did you find these papers that you produced here, D-9 and D-11? A. In a trunk that I have, and in giving away a lot of old shirts and things, that I was cleaning up, I emptied it to look for my discharge or anything I might find, (1237) I put away a lot of stuff to give the Salvation Army or something, and in one of a pair of socks happened to be the papers.

Q. In a sock? A. Yes, sir.

Q. And where was this from? A. Up in my daughter's house.

Q. Where? A. In Newark.

Q. In Newark? A. Yes, sir.

Q. Not in Belmar? A. No, sir.

The Court: In a sock?

The Witness: Yes, sir.

Q. And this was buried in the bottom of a trunk? A. No, it was in the clothes compartment where I kept a lot of old clothes.

Q. Did you remember putting it into the sock, when you took it out A. I remembered—yes, sir, I remembered it; it come back to me when I found it.

Q. Oh, it came back to you? A. Yes. I was just picking up things; and I found a cuff (1239) link in one of the shirts.

Q. And you remembered sticking these two papers in a sock? A. It came back to me then. I had just hid them and couldn't find them.

Q. Both papers were together? A. With a few more things, some other papers, not relating to this at all.

Q. In a sock; I see. And where was this trunk all the while? In your daughter's house? A. No, sir. Well, that is, she lived there two years; I had it with me at the Hotel Riviera until about, I would say, 1947.

Q. 1947? A. About that time; until it was sold.

Q. What was sold? A. The hotel.

Q. And where was the trunk? A. I had it with me then.

Q. From when? From what point on? A. Oh, I had it with me all the time. I always had the trunk.

Q. All the time? A. Yes.

Q. At all times? (1240) A. Yes, sir.

Q. Where? I want you to indicate the place where this trunk was. A. At my hotel and my daughter's house.

Q. What hotel? A. Riviera Hotel.

Q. In Newark? A. Yes, sir.

Q. How long was it there? A. Let's see. Four years.

Q. Four years? A. From '44 till about—'43 or '44 until about '47 or '48.

Q. '43 or '44 to '47 or '48? A. About that time.

Q. Where was it prior to '43? A. Prior to '43 it was in Belmar, New Jersey.

(1241) Q. For how long? A. The trunk?

Q. Yes. A. Many years, been there many years.

Q. Well, how many years? A. Oh, I don't know. I don't know off hand.

Q. Well, I want you to give me some idea how many years that trunk was in Belmar. Three years?

The Court: Three years?

The Witness: Say a couple of years. Put it any way you want it.

Q. I don't want to put it any way. I want you to put it. A. Well, it was always where I lived, at my daughter's house or with me.

Q. No, I want you to tell me where this trunk was. A. At my daughter's house, at the Hotel and down at the shore.

Q. Where did your daughter live when this trunk was at your house? A. 201 Midland Place, Newark.

Q. How long was that trunk at 201 Midland Place, Newark? A. Since my daughter moved there, two and a half years ago.

Q. Two and a half years ago? A. Yes, sir.

Q. That would be when, the middle of 1947? (1242) A. About that.

Q. Or the beginning of '48? A. About that, yes, sir.

Q. And that's the only daughter you have, isn't that so? A. No, sir, I have two daughters.

Q. You have a daughter living down at Belmar? A. Yes, sir.

Q. Now, where was the trunk prior to the latter part of 1947 or the early part of 1948? A. With me at the Hotel Riviera, Newark.

Q. For how long? A. Three or four years.

Q. That would bring it back to '43-'42? A. Yes, sir.

Q. 1942? A. About that, yes, sir.

Q. Or 1943? A. '42 or '43, I don't know.

Q. '42 or '43, you don't know. What part of '43? A. Well, let me see, if you want it exact I will give it as close as I can. I moved from the Warwick Hotel to the Riviera—I can get you the exact dates I moved in when I moved from the Warwick.

Q. Well, when did you move from the Warwick? Tell us (1243) when you moved from the Warwick. Was it in the Warwick too? A. Yes, over in the Warwick too.

Q. When did you move from the Warwick? A. When I moved to the Riveria I moved from the Warwick Hotel.

Q. And when was that? A. I believe it was, I think that was '43 or '44?

Q. '43 or '44? A. '43 or '44.

The Court: Where was the trunk when you put these papers in it.

The Witness: Where it is now? My daughter's home.

The Court: No; where was it when you put these things in the trunk?

The Witness: At the Hotel Warwick, New York.

The Court: In what year?

The Witness: I remember when Joe gave me—

The Court: No, what year

The Witness: 1942.

The Court: All right. You put these papers in the sock in 1942 in the Hotel Warwick in this trunk. Then the trunk had these various peregrinations and you haven't seen the paper since that time?

The Witness: No, sir.

(1244) The Court: It stayed in the sock since that time?

The Witness: Yes, sir.

Q. That was your own personal trunk? A. Yes, sir.

Q. Where you kept your own personal belongings? A. Yes, sir.

Q. And important matters?, A. Yes.

Q. And you searched through that trunk when asked to produce the papers in New York? A. Half a dozen times I searched it.

Q. Half a dozen times you searched that trunk? A. Yes, sir.

Q. And you didn't find any papers? A. No, sir.

Q. And you told Mr. Kiendl in answer to a question that you didn't have a scrap of paper—

Mr. Van Riper: Now—

A. He said I didn't have a scrap of paper. I didn't tell him that.

Q. —in your New York testimony—"Now, you wanted an opportunity, Mr. Rutkin, to complete a search for all the documents that I talked to you about at various times when I examined you. You said you wanted two weeks additional (1245) time. Have you completed that search? A. Yes, sir.

Q. And have you found any documents of any kind whatsoever? A. No, sir, I could find nothing.

"Q. So that now today the fact is that as a result of all the search that you have made at all times from the time you first discovered this alleged fraud down to October 1948, you have not been able to find anywhere a single scrap of paper that bears on the subject matter of this lawsuit with the exception of the photostatic copy of the amended declaration."

The Court: He has testified that he didn't find it. I think we will recess now until two o'clock. The jury will be excused first.

(Noon recess.)

(1246) AFTERNOON SESSION

JAMES RUTKIN, resumed.

Cross examination (Continued) by Mr. Tyne:

Q. Mr. Rutkin, as I recall it, prior to recess we were talking about these papers in a sock. A. Yes, sir.

Q. And you said you had a number of other papers in the sock along with these two papers that were in evidence. A. A few other papers, yes, sir.

Q. How many papers? A. Oh, two, three or four.

Q. Two or three or four? A. Cablegrams.

Q. Cablegrams? A. Yes, sir.

Q. Unimportant papers? A. Yes, sir.

Q. Didn't mean anything? A. Yes, sir.

Q. Had you picked up that sock— A. Pardon?

Q. Had you picked up that sock at any time during your search? A. I just brushed through, old clothes.

Q. No, had you— (1247) A. No, sir.

Q. Had you seen that sock in that trunk when you were making the search in connection with the New York case? A. No, sir.

Q. You didn't see it? A. No, sir.

Q. And you went through it some six times? A. I would say half a dozen times, yes, sir.

Q. And when did you find these papers? A. About a week I would say before the trial was to start here.

Q. And you went through the trunk—how many times did you go through the trunk at that time before you found them? A. I went through it I would say about a week previous to that.

Q. Well, how many times did you go through it before it was produced in court here, before you found it?

The Court: Well, he said he went through it half a dozen times.

A. Half a dozen times.

Q. All together? A. Yes, sir.

(1248) Q. You testified in connection with Browne Vintner that you were very active from the commencement of it until its termination, is that right? A. Yes, sir.

Q. You testified you were the promotion man? A. Yes, sir.

Q. You did all the promotion work, is that so? A. No, sir.

Q. Was there any other promotion man in Browne Vintners other than yourself? A. Oh, yes, yes, sir.

Q. How many A. Everybody in the company.

Q. Everybody in the company? A. Yes.

Q. Well, let's see, all having the same duties? A. No, everybody in the company had different duties but they would also do as much promotion of the company as they could, because that was the main function of the company, to get the distribution of liquor.

Q. Even the people who worked in the office were to do promotion work, as well? A. I believe they did.

Q. They did: The same kind of promotion work that you did? A. Yes, I think they were kind of rewarded if they wanted (1249) to do that kind of work.

Q. No, I am asking you if the people in the office did the same kind of promotion work that you said you did. A. Not the same kind, no, sir.

Q. What kind did they do? A. Well, I would put it this way: anybody that worked in the office that was interested in the office, they would order drinks at their favorite bar or restaurant and tell the proprietor, if they were friendly with him, just where they are employed; they would deem it a favor if they put a bottle or two on the bar, put it in view of the public eye.

(1250) Q. And who did that? A. I would say any employee.

Q. Any employee? A. That really had the good will of the firm at heart.

Q. They would go out to dinner and talk to the bartender? A. No, they wouldn't do that.

Q. Would they go in there specially to do that? A. No, sir.

Q. Well, when would they go in any place to do that? A. Well, I couldn't say that.

Q. Well, you said that they wouldn't do it; when they went in for dinner would they do it at that time? A. Well, if they knew the proprietor of the place or if they knew the bartender or they knew any of the captains in that particular restaurant where they were—

Q. Don't be so "iffy" about it. Do you know of your own knowledge?

The Court: Mr. Tyne, what are you leading up to?

Mr. Tyne: To find out what this man was doing for Browne Vintners.

The Court: Well, he said he was out at Chicago. I don't suppose others were spending two or three thousand dollars a week on promoting sales, were they?

(1251) The Witness: They wouldn't have that authority. There were only two or three had authority, Mr. Reinfeld, Lentz and myself.

The Court: I gather they would do what they could to persuade people to sell their whiskey.

The Witness: Yes, sir.

The Court: Without any extensive campaign like two or three thousand dollars.

The Witness: Oh, they couldn't do that. They wouldn't even be allowed their expense money on a thing like that. It would only be when someone was employed by Hunter Whiskey, that's the brand they drank, they would go in and ask the bartender to get the brand of the company they work for.

The Court: Jack Dempsey didn't drink his—

The Witness: I told Jack Dempsey that whiskey was no good and he woufdn't agree.

The Court: Any good whiskey they would push it?

Q. You and one or two others were given an expense account to promote the sale of Browne Vintner products? A. We were not given expense accounts. We were given freedom and we put our expenses in. Whatever we spent was okay.

Q. Whatever you spent regardless of the amount? A. Yes, sir.

(1252) Q. That could run up to a hundred thousand dollars or so. A. No, sir.

Q. How much? A. Well, if I spent anything,—for example one particular time I loaned a friend of mine that bought the International Casino on Broadway in 1938, and they had a big show there—they employed Milton Berle and Harry Richman—

The Court: Uncle Miltie Berle?

A. (Continuing.) Yes, and Harry Richman and a very big show. Alex Finn, he was the general manager from Boston, he was the general manager for a fellow named Chet Canning—he was in the oil business, he owned it—I loaned Alex Finn $5,000 to promote and push our goods there. Well, I didn't do that by myself in an amount like that. I took that up with Joe and Sam Lentz. They agreed it was worth it.

Q. When? A. In 1938 when it opened.

Q. Did you get it by check or cash? A. I didn't get it.

Q. How did you get it?

The Witness: Did we give Mr. Finn the money by check or cash?

Q. Yes. A. Oh, cash.

(1253) Q. Where did the money come from, Browne Vintners? A. Yes, sir.

Q. Who gave you the cash? A. Joe Reinfeld.

Q. Without consulting anybody else? A. Yes, sir.

Q. Did he take it out of the Browne Vintners money? A. Slush fund.

Q. Browne Vintners' slush fund? A. Yes, sir.

Q. Where was that fund? A. In Browne Vintners, run by a man named Max Fuchs.

Q. He had control of the fund? A. He had control of the books for that fund.

Q. And where was the deposit of that fund? A. Max Fuchs had that in his charge.

Q. Under his own personal name? A. Yes, sir.

Q. Not under Browne Vintners'? A. No, sir.

(1254) Q. Did you ever go to Fuchs to get some money from this slush fund? A. Occasionally.

Q. And how often? A. I don't think I went to Fuchs more than, two, three, four times.

Q. Where is Max Fuchs now? A. Right here in New Jersey.

Q. Whereabouts? A. I believe, I am not sure, I think he is Hudson County somewhere.

Q. What city? Do you know his address? A. No, I don't know his address.

Q. You don't know his address. F-u-c-h-s? A. Right.

Q. When did he terminate his services with Browne Vintners? A. I believe Max terminated his services when he went into the armed forces.

Q. When? A. I do not know the year.

Q. Did you ever get this $5,000 back? A. No, sir.

Q. You said it was a loan? A. Yes, sir.

Q. And you never got it back? (1255) A. No, sir.

Q. Is that where your expenses came from to push these products in the course of your promotion work? A. From the slush fund.

Q. From the slush fund. A. A lot of it; not all of it.

Q. How much would you say came from the slush fund? A. Well, that would be guess work. I would guess about a third to a half.

Q. What? A. I would guess about a third or a half.

Q. All right. How much in money? A. That would be in money. The rest would be by check.

Q. Well, how much? Give us the aggregate amount. A. Well, out of that $5,000, that whole $5,000 was from the slush fund.

Q. No, no, how many more thousand did you get out of this slush fund when you were doing this promotion work?

The Court: Over what period of time? Over what period of time?

Mr. Tyne: The entire period of time he was doing it, whatever it was.

A. Well, the money I got from Joe Reinfeld I would have to say come from the slush fund. He certainly didn't pay it himself.

(1256) Q. Wait a minute, now.

Mr. Tyne: Let me hear that answer.

A. (Repeated by the reporter.)

Q. Do you know whether or not the money you got from Joe Reinfeld came from the slush fund? A. Oh, yes.

Q. How do you know it? A. He told me so.

Q. Oh, he told you. A. Yes, sir.

Q. How much money did you get from Joe Reinfeld that came out of this slush fund in the entire period that you were supposed to be doing this promotion work? A. I would have to make a rough guess on that, Mr. Tyne, if you wish a guess.

The Court: All right, give a rough estimate.

A. 25,000.

Q. Now, did your expenses that you incurred in Chicago when you were doing this promotion work come out of this slush fund too? A. Yes, sir.

Q. On direct examination you testified that you worked for six or eight months out there, is that right? A. Yes, sir.

Q. That you got $300 a week; is that right? (1257) A. Yes, sir.

Q. Salary? A. Yes, sir.

Q. That was by check, wasn't it? A. I do not recall. It may have been or it may not. I am sure it was by check. I do—I am sure it was by check.

Q. And you got two to three thousand dollars per week for expenses? A. Some weeks.

Q. Didn't you testify that you got two or three thousand dollars a week—

The Court: No, he said some weeks he got two or three thousand.

I don't know what you are going into all of this detail for. We have got a definite thing we are trying to prove here.

Mr. Tyne: I think it is important, sir. I would like to proceed.

A. Mr. Tyne, some weeks I spent $200 and some weeks nothing. Some weeks it was high.

Q. All right. How much did you spend in expenses during the six or eight months you were out there? A. Well, let's see. Maybe ten or fifteen thousand dollars.

(1258) Q. Did you give an accounting to Max Fuchs for that money? A. No, sir.

Q. You did not? A. No, sir.

Q. Did Joe Reinfeld? A. Either Joe Reinfeld or Samuel Lentz, or both.

Q. In writing? A. No, sir.

Q. Just orally? A. Yes, sir.

Q. And they took your word for it? A. I was never questioned.

Q. Never questioned? A. (Continuing) About anything.

Q. And you did this work consistently, did you not? A. No, sir, not consistently.

Q. Over what period of time? When did you start doing the promotion work and when did you cease doing it?

A. Periodically, but I was not on the payroll, I was doing it on account of my interest in Browne Vintners.

Q. That is what I want to find out. You said you were doing it periodically; now, what do you mean by periodically? A. Well, the year it was formed—

Q. This is 1934? A. '34.

(1259) Q. Yes. Go ahead. A. We didn't make too much money that year, it was a lot of hard work putting the whiskey in new places, everybody had their own brands, and we more or less knew each other in that business. For example, a fellow by the name of Jake Kilhenny owns the Cuttysark in America, he is a very good friend of mine.

Q. Just give us the answer without going into all of these things. A. Well, when he is in a place, and I am in a place I wouldn't outbid him and he wouldn't outbid me. We would simply buy a drink, just each get in there whatever we could.

Q. All right. In 1934, did you work consistently to 1934 doing this promotion work? A. No, sir.

Q. What part of 1934 did you devote to it? A. I would say two or three months.

Q. Two or three months of the year? A. Yes, sir.

Q. And what did you do the other seven or eight months —or nine or ten months, rather? A. I don't recall; looking for some proposition.

Q. Looking for some proposition. A. Yes, sir; to the best of my recollection right now.

Q. Where, in and around New York or California, Florida, or (1260) where? A. Anywhere where I might have one, I will put it that way. Mr. Lentz gave me a proposition to buy hotel in Phoenix, Arizona, and the manager of the hotel wanted me to go out there and buy it.

Q. Well, did you go out there to buy it? A. No.

Q. All right. Did you engage in any other business in 1934? A. I don't think so.

Q. How about 1935, how much of 1935 did you devote to promotional work? A. About the same length of time as '34.

Q. And what did you do the other nine or ten months? A. Just looking around for propositions.

Q. Did you get a proposition in 1935? A. I didn't go into anything that I can recall.

Q. Now, who paid your expenses when you were doing the promotional work during these months of 1934 and 1935? A. Either Joe Reinfeld or Sam Lentz?

Q. Paid you? A. No pay, I didn't get any salary.

Q. You didn't get any salary? A. No, sir.

Q. Did you get any expenses? A. No, sir.

(1261) Q. You paid your own expenses? A. Yes, sir, only what I had spent, if I put in a claim for that.

Q. Did you put in a claim for what you spent? A. Yes, sir.

Q. To whom? A. Joe Reinfeld or Sam Lentz.

Q. How much did you claim in 1934? A. I couldn't recall. We didn't spend much money then. I couldn't even guess at that.

Q. How about '35? A. It couldn't have been very much.

Q. What do you mean by "not very much"? Can you give us any idea? A. Well, I would say a thousand dollars or two over the entire period.

Q. Of '34 and '35? A. Yes, sir.

Q. Now, what part of the time did you devote of 1936 to Browne Vintners? A. Well, in Florida I devoted quite a little time when the hotel was under construction and—

Q. You are now talking about the Dempsey-Vanderbilt Hotel? A. Yes, sir.

Q. When was this, December 1936? (1262) A. Yes, sir. While it was under construction I was to see Charlie O'Neil and I was with Tommy Gorman, the New York City agent—

Q. All right. A. —for Browne Vintners.

Q. All right. There was the Dempsey-Vanderbilt Hotel that you went into. Now, that was—

Mr. Van Riper: Now, if your Honor please, the question was what part of 1936 he spent in promotion work, and I think the witness should answer.

Mr. Tyne: I thought he had finished. He is giving me a lot of names.

Mr. Van Riper: If he has finished, all right.

Q. Are you finished? A. Yes, sir.

Mr. Van Riper: All right.

Q. All right. Is that the time you borrowed—was it sixty or $120,000? A. Sixty.

Q. $60,000 from Joe Reinfeld? A. Yes, sir.

Q. And you got $60,000 yourself, is that right? A. No, sir.

Q. Well, did Mr. Reinfeld give you an additional $60,000 to make the $120,000? (1263) A. No, sir. May I explain that, Mr. Tyne?

The Court: Go ahead.

A. (Continuing) You see, Joe and I spoke about it the day previously and—night previously—

Q. This is in December '36? A. Yes, sir. I said, "Joe, I got a reservation on a 4 o'clock plane tomorrow, I would like to have that $120,000," which we had already agreed upon and spoke about.

The Court: Well, $60,000 of it was yours, as I understand it, and $60,000 was to be his?

The Witness: Yes, sir.

The Court: That was the question.

The Witness: Yes, sir.

The Court: How the $120,000 was made up. Is that your question?

Mr. Tyne: Yes, sir.

Q. Now, did you have that $60,000 of yours on your person or did you have to get that from Joe Reinfeld? A. I got the whole $120,000.

Q. The whole $120,000? A. Yes.

Q. Yes. And you took that to Miami? A. Yes, sir.

Q. And invested it in the Dempsey-Vanderbilt Hotel? A. Yes, sir.

(1264) Q. I think you testified that some accountant by the name of Goldstein and Sam Cohen— A. Sam Cohen.

Q. Yes. Sam Cohen was your personal accountant, wasn't he? A. No, sir.

Q. He was not? A. No, sir.

Q. Was George Goldstein? A. No, sir. I never met Goldstein until that time.

Q. Until that time? A. Yes, sir.

Q. He has been acting as your accountant since that time? A. No, sir.

Q. Not at all? A. No, sir.

Q. What? A. Part of the time.

Q. When? A. He filed a few taxes for me. I sold a corporation called The Tournament of Champions; I think he filed that for me. He filed my tax report for 1943 and in '44 and in '45.

Q. So he has been your accountant since that time, hasn't he? A. I wouldn't say accountant. I never had an accountant or bookkeeper look at any books of Joe's or Browne Vintners' (1265) I depended everything on him.

Q. This is I. George Goldstein you are talking about? A. Yes, sir.

Q. When you got down there you said you invested some $50,000 into the hotel and you turned the rest over to Goldstein and Cohen, is that right? A. Yes, sir.

Q. How long did you remain down there? A. I came back periodically, about every two or three weeks.

Q. Two or three weeks? A. About every two or three weeks.

Q. During the busy season? A. Yes, sir, all winter.

Q. All winter long? A. Yes, sir.

Q. And what did you come back for, to do promotion work? A. No, probably see Joe and see whatever there was, whatever I had to do, I was asked to consult about. I used to come back a few days and clean it up and go home and come back there.

Q. Back to see Joe, clean it up— A. Well, there was—

Q. What did you have to see Joe about that brought you back every two or three weeks? A. Well, there were different things. Joe had a couple of problems with Sam Bronfman of Seagram Distillers—I don't (1266) remember just what it was—he wanted to talk to me about it, you know. Nothing that I can just generally remember right now.

Q. Well, on all these momentous problems that developed in Browne Vintners with Joe Reinfeld, he consulted you during this period of time, didn't he? A. And I consulted him.

Q. On all these big problems he didn't make a decision unless he consulted you? A. Oh, no, no, Joe didn't have to see me, he could do anything he wanted.

Q. Well, did he consult you? A. Sometimes.

Q. On important problems? A. Sometimes.

Q. When you say sometimes, how often? A. Well, I couldn't get down to that, I couldn't just generalize. When he bought the plant, when Joe himself bought it in Bristol, Penna. for the bottling of Wilson's, because previous to that we were 50-50 partners with Wilson bottling in Relay, Maryland, the Calvert people were bottling it for us and it was a 50-50 proposition, although we had owned the label of Wilson. When we moved to Bristol the Seagram outfit

got out and we remained with 100% of Wilson thereafter. Well, I went down to see Joe to look at that plant, to see (1267) what I thought of it.

Q. When was that? A. I believe that was sometime in '35 or '36.

Q. '35 or '36? A. I believe it was in '36, yes.

Q. And he consulted you before a decision was made in connection with that? A. Oh, no. Pardon me, Mr. Tyne, he didn't consult me, he just asked me my advice. We were very, very close friends.

Q. Well, now, let's see. A. It wasn't a question of business policy.

Q. Are we quibbling on words here? I asked you if he consulted you and asked for your advice. A. Friendly advice, not that I knew more than him, but we just talked things, generally, over.

Q. What I am getting at, and all I want you to tell me, too, did he ask your advice on the important problems that came up in Browne Vintners? A. No, sir, it is not so.

Q. It is not so? A. No, sir.

Q. Well, was this an important problem, this acquisition of all the rights, bottling and others, to the Wilson whiskey? A. Well, that was already conceded, that was done.

(1268) Q. No, was it important? A. Yes, that is an important policy.

Q. It was the most important thing that Browne Vintners had, wasn't it? A. No, sir.

Q. Well, was Wilson whiskey the most important product it had? A. No, sir.

Q. It was not? A. No, sir.

Q. Was it an important product? A. When we got it it was very unimportant, it was a failure three times when Schenley had it, and it was so unimportant we bought it for $50,000.

Q. But you, with your promotion work, you built it up? A. Not me myself, it was a combination of help. It wasn't me myself, I wouldn't say that. I don't say any one man did it.

Q. Who else did it outside of yourself? A. I would say Zwillman, I would say—

Q. Zwillman? A. Yes.

Q. Did he work—do promotion work on that too? A. Did a lot of promotion work.

Q. Did you go out and work along with him on it? A. No, sir.

(1269) Q. Did he work independently? A. Yes, sir; without salary, just on his own, on account of his heavy investment in Browne Vintners.

Q. You knew he was doing promotion work, too? A. Yes, sir, I am sure of it.

Q. Going into bars and asking them to put— A. No, sir, that was only one of the things.

Q. Well, what else? What else? A. Well, I will tell you, he was very friendly right here in Newark with J. & J. Distribution Company; he was very friendly with a fellow known as Frank Rikeman that owns Gallsworthy; so am I.

Q. You are talking about Zwillman now? A. Yes. I know he knows Jack Levenson that owns the Capital Distributing Company in New York.

Q. Did you ever go in these places with Zwillman to help promote the stuff? A. Not with him.

Q. Not with him? A. No, sir.

Q. Not at any time? A. No, sir, that I can recall. I went in different restaurants with him at times.

Q. Different restaurants with him? A. Yes, sir.

(1270) Q. To promote that Browne Vintners' products? A. No, sir, when we would go we wouldn't buy a drink, we would buy a bottle of White Horse and put it on the table.

Q. You were associated with him back there in the bootleg days, weren't you? A. No, sir.

(1271) Q. You were not? A. Not that way.

Q. Well, he was in the combine, wasn't he? A. He was in the combine but we were not—we just amalgamated, we weren't partners before that, at any time.

Q. No, I mean in 1930, when Zwillman and his crew amalgamated with yours— A. Yes, sir.

Q. You became associated. A. That's right, yes.

Q. And you worked along with them? A. Yes, sir.

Q. You pushed the product, sold it, and did whatever was to be done. A. Yes, sir.

Q. Did Zwillman, too? A. Yes, sir.

Q. And— A. In his spare time. He didn't put all his time in, Mr. Tyne, doing it; in his spare time. It was very important for him to do it.

Q. And you saw him doing those things around there and you worked along with him, didn't you? A. No, sir, I didn't work along with him. It just (1272) happened on occasion, or I asked him, if I didn't know a certain wholesaler.

Q. Asked him? Who? Zwillman? A. Zwillman; or he would ask me, vice versa, if I knew a certain wholesaler or big outlet of chain stores, cafes or restaurants, where they could make a contact, like Child's Restaurant or somebody like that.

Q. You cooperated and collaborated? A. That's right, yes, sir.

Q. In this business? A. That's it, yes, sir.

Q. Talked things over, passed information on? A. That's right, yes, sir.

Q. And worked jointly together; and in 1936, when you went down to Florida, you got in this hotel business along with Jack Dempsey, is that right? A. Yes, sir.

James Rutkin—Defendant—Cross

Q. And you continued there for how long? When did you go out of the Dempsey-Vanderbilt? A. I think it was '37, I think it was '37; around '37.

Q. What part of '37? A. I don't know. The latter part, say; the latter part.

Q. The latter part of '37? A. I think that was '37, the latter part.

(1273) Q. What? November, October? A. Well, it could have run into early '38, either; I don't know.

Q. You don't know? A. I don't recall the time.

Q. You were only down there about a year then, is that right? A. Well, I know I opened two seasons, see. So that would mean I was there a little over a year, because we opened in November. The first year we opened New Years' Eve, and we closed in April, with the bashed windows and all that, and we re-opened the following November, '38—or '37; and I was entirely out before it was closed.

Q. In when? What year? '37? A. That would make it '38, I guess.

Q. '38? A. Yes.

Q. You heard Jack Dempsey say it was a flop. A. Yes.

Q. Was it a flop? A. Well, it wasn't a success. It lost money.

Q. You lost money? A. Yes, sir.

Q. How much money did you lose? (1274) A. We lost approximately $40,000.

Q. You lost approximately $40,000? A. No, I lost 20, my share.

Q. Oh, I see. The other was Joe Reinfeld's. Now, when you were down there you were featuring Dempsey Whiskey, weren't you? A. No, sir.

Q. You were not? A. No, sir.

Q. Did you ever feature Dempsey Whiskey? A. No, sir.

Q. Did you ever push Dempsey Whiskey? A. No, sir.

Q. At no time? A. No, sir.

Q. Were you paid any commissions—strike that out. Who makes Dempsey Whiskey, or who did make it? A. They don't—can I explain that, Mr. Tyne?

Q. No, just tell us who makes it, if you know. A. They don't make it any more.

Q. No,—

The Court: Who made it then?

Q. Then. A. McKesson—Schenley's Distilleries.

(1275) The Court: They just slapped that label on, didn't they?

The Witness: Yes. Schenley Distilling Company made it.

Q. Made it? A. Yes, sir.

Q. Who sold it? Who was the distributor? McKesson & Robbins? A. No, sir, it was McKesson & Robbins that owned the label for that year.

Q. McKesson & Robbins owned the label? A. And they had it bottled by Schenley.

Q. Then McKesson & Robbins was what? A. They are a drug company, with a subsidiary in the liquor business.

Q. And they sold it; they were distributors, weren't they? A. Yes, sir.

Q. Now, did you ever work for McKesson & Robbins in connection with doing missionary work? A. Not a single day.

Q. Not a single day? A. No, sir.

Q. You never were paid any commissions? A. Yes, sir.

(1276) Q. By whom? A. By McKesson & Robbins.

Q. For what? A. For the acquirement of the Jack Dempsey label.

Q. For the acquirement of the Jack Dempsey label? A. Yes, sir.

The Court: You mean Dempsey sold them the right to use his name or what?

The Witness: The right to use his name for a single year or two years, a certain period, not forever.

Q. How much were they paid for that? A. $25,000.

Q. For just acquiring the label, is that right? A. Yes, sir.

Q. And of course that would have put you in direct competition—that whiskey would have been put in direct competition with Browne Vintners' and Wilson, would it not? A. Oh, no.

Q. No? A. No, sir.

Q. Well, you say you were promoting the sale of Wilson whiskey and other products down in Miami, right? A. Yes, sir.

Q. And you say it wouldn't be in competition with it? (1277) A. No, sir.

Q. Well, you returned in 1938 to this venture in which you said you suffered a loss, right? A. Yes, sir.

Q. And did you do any promotion work for Browne Vintners during 1938? A. I never stopped.

Q. You never stopped? A. Until the company was sold.

Q. How much time in the year 1938 did you do promotion work for Browne Vinthers? A. Well, only when Joe or Lenz asked me about a specific thing like even Lou Holtz called on me with the State Manager of Wilson—his name was Berkowitz. He told me that Zig wouldn't even let him in his restaurant on Central Avenue and I am very friendly with the Zig boys for many, many years, Billie and Joe, and I went up there and got them not only to accept Wilson but to do business with J. Reinfeld and Com-

pany. They had a little disagreement and I went in there and straightened it out.

Q. They had an illicit agreement, did I understand you to say?

The Court: No, a little disagreement.

The Witness: No, sir, a little disagreement.

(1278) Q. You straightened it out? A. Yes.

Q. Did you do any other promotion work during that year 1938? A. Oh, yes, nothing big that I can remember that stood out.

Q. How much time during the year did you devote to that? A. I don't know, all the spare time that I could find.

Q. What would it amount to in days, weeks, or months? A. Well, I made it my business to go up and say hello to the president. He asked about Christenberry once in a while and I would go here and there, I don't know. I couldn't put any time—there was no special time in hours or anything like that.

Q. Can you give us any idea of the aggregate time that you spent there? A. No, sir.

Q. Within several months? A. Well, I used to go around to see Mr. Reinfeld, Mr. Lenz and some of the other boys up there, just have conversations.

Q. That's about all? A. That's right.

Q. What else did you do during the year 1938? A. I can't recall right now.

Q. You can't recall? (1279) A. No, sir, I cannot recall.

Q. Now, how about the year 1939, what promotion work did you do for Browne Vintners if any? A. I believe that was the year I went to Chicago.

Q. Is that the year you went to Chicago? A. Yes, sir.

Q. And you worked there for some six or eight months, you say? A. Something like that.

Q. And that is also the year that you went to jail too, isn't it? A. Yes, sir.

Q. You spent how long in jail? A. Nine months and a few days.

Q. You got out some time in 1940? A. April, some early date in April. I don't know the date.

Q. And that was for operating an illicit still in Massachusetts, isn't that right? A. Yes.

Q. And then did you go back to Browne Vintners and do more promotion work? A. Yes, sir.

Q. From April until December of 1940? A. No, I don't think I went in April. Joe Reinfeld came (1280) up to see me at the Hotel Riviera and Lou Holtz came up to penitentiary while I was there. He visited me to the penitentiary. He visited me and wanted to know if I wanted to see Joe. I said, "No, I want you to stay away from me and have Joe stay away from me. They have enough on me."

Q. Now, all during this period 1934 to 1940 the only time you were on the payroll of Browne Vintners was during this period in Chicago, isn't that so? A. Yes, sir.

Q. And at no other time did you receive any compensation from Browne Vintners. A. The only money I ever received from Browne Vintners was money that I spent for expenditures out of this slush fund.

Q. Out of the slush fund? A. Yes, sir.

Q. But insofar as your salary was concerned, any payment of salary, the only time you received any salary was when you were in Chicago. A. Right, yes, sir.

Q. Now, did you have any office in Browne Vintners? A. No, sir.

Q. When I say office I mean a physical office. (1281) A. I used all the offices.

Q. Used all the offices indiscriminately? A. Yes, sir.

Q. You had no particular office of your own? A. No, sir.

Q. You were not an officer of the corporation, were you? A. No, sir.

Q. You didn't attend any of the stockholders' meetings, did you? A. No, sir.

Q. You didn't attend any of the directors' meetings, did you? A. No, sir.

Q. And you gave no orders to the president, the successive presidents or the other officers of the company, did you? A. No, sir.

Q. And they took no orders from you, did they? A. No, sir.

Q. At no time did your name appear in the records of Browne Vintners as a stockholder?

Mr. Van Riper: I object to that. How can he tell what was in the record—if he knows.

The Court: Well, he has been telling an awful lot of things about Browne Vintners. If he knows let him (1282) tell. If he doesn't let him say so.

A. Official records?

The Court: Yes.

A. Not that I know of.

Q. Not that you know of. You knew as a matter of fact, that your name did not appear on the official records. A. It couldn't or they would have lost the license.

Q. Would have lost the license? A. Yes, sir.

Q. If your name appeared as a stockholder of record? A. Yes, sir.

Q. Well, Mr. Reinfeld was an officer, was he not? A. Not in the beginning I don't believe.

Q. Well, wasn't he treasurer? Duly elected treasurer? A. In the beginning?

Q. Toward the beginning, yes, sir. A. I don't know. He may have been because Joe told me—that's the only reason I am telling you that—Mr. Reinfeld told me he couldn't get on either because I wanted to get on myself.

Q. He was the president, wasn't he? A. I don't believe he was ever president of Browne Vintners.

Q. Well, he was president when Browne Vintners was sold, wasn't he? You don't know that? (1283) A. I am going up to 1938. For a short time Joe was present.

Q. For a short time? A. Yes, sir.

Q. I show you D-11 and direct your attention to these items here, advances, May 20, 1940, for $5,000. A. Yes, sir.

Q. Who made the advance? A. Joe Reinfeld.

Q. To whom? A. Me.

Q. In cash? A. Yes, sir.

Q. Did he do it personally? A. Yes, sir.

Q. What was that 5,000 for? Did that come out of the slush fund? A. No, sir.

Q. Where did it come from? A. An advance on my money.

Q. An advance on your money. A. Yes, sir.

Q. Did you need money at that time? A. I must have needed it; if I drew it, I did.

(1284) Q. All right. In 1941, $36,000, another advance. Where did that come from? A. Joe Reinfeld.

Q. To whom? A. To me.

Q. And did Joe Reinfeld pay it to you personally? A. Yes, sir.

Q. What did you use that $5,000 for? A. I don't know. Personal.

Q. May 20, 1940? Personal? A. Personal, yes, sir.

Q. Well what, for example? A. Oh, I had bills to pay and so forth, debts incurred.

Q. Personal debts and obligations? A. Yes, sir.

Q. Unconnected with Browne Vintners? A. No, sir.

Q. It wasn't in connection with any promotion work? A. No, sir.

Q. Now, did you receive any advance of money from Joe Reinfeld prior to May 20, 1940? A. I don't think so.

Q. Well, you didn't forget about that $120,000, did you? A. Where is that? Which one is that?

(1285) Mr. Van Riper: If the court please, I think that the District Attorney ought to make the question clear, whether or not he is talking about advances or whether he is talking about loans. He is talking about $120,000 that was Reinfeld's own investment, part of it.

Q. May 20, 1940. Did you receive any moneys—you did receive moneys, did you not, whether they be advances or loans, from Joe Reinfeld, prior to May 20, 1940? You so testified, $120,000; is that right? A. Yes, sir.

Q. Now other than that item there of 5,000 and this 120,000, did you receive any other moneys from Joe Reinfeld, either as an advance or as a loan? A. In 1940?

Q. No, from 1934, when Browne Vintners was organized, up to May 20, 1940, did you receive any other moneys from Joe Reinfeld either by way of advances or loans other than those two items, $120,000 and $5,000? A. Not that I can think of.

Q. Not that you can think of? A. No, sir.

Q. Well, can you think a little bit more about it? A. From '34 to '40; outside of the $5,000 eh?

Q. And the $120,000. (1286) A. You mean this and this (indicating)?

Q. No, I am talking about moneys received from Joe Reinfeld prior to this date, May 20, 1940, other than the $120,000. A. No, sir I cannot.

Q. You never received any moneys from him? A. I would say no, sir.

Q. Was this payment, these payments here, these moneys here—do they indicate that they were advances made after Browne Vintners was sold? Is that right? A. You see, Mr. Tyne—

Q. No, just answer the question. A. All these moneys?

Q. Yes. A. Well, the May 20, five thousand, the company wasn't sold then.

Q. No, I am not saying it was. I am not directing your attention to that. A. The company was sold in December.

The Court: You mean any of these moneys?

Mr. Tyne: Yes.

A. Did I receive any of this before?

Q. Well, look at the dates there. A. The dates. The only one, the five thousand.

(1287) Q. All right. Did you receive any payment from the Browne Vintners Company as and for your distributed share of any stock that you owned in Browne Vintners? A. Will you repeat that question, please?

Q. (Repeated.) A. Well, we never applied it that way, Mr. Tyne.

Q. No, did you— A. No, sir.

Q. Did you receive any moneys?

Mr. Van Riper: Now, if your Honor please, I have no objection to the District Attorney eliciting information. The first question was did he receive it from Browne Vintners Company. Now the question is did he receive any money. I think it is quite a different question.

A. I did not receive any money from Browne Vintners. I received money from Joe Reinfeld.

Q. You received money from Joe Reinfeld? A. Yes, sir.

Q. Now, how much money did you receive from Joe Reinfeld, when the company was sold in December 1940? A. They got one date on there that's mixed up.

The Court: No, how much—the question is, how much did you receive from Joe Reinfeld when the company was (1288) sold in 1940.

The Witness: I was not here, your Honor. I was at the Warwick Hotel—

The Court: How much did you receive from Joe Reinfeld? I am repeating the question—

The Witness: Before the company was sold?

The Court: When the company was sold.

The Witness: Immediately when the company was sold, nothing.

The Court: Immediately after that.

The Witness: After that? The sums so stated on there.

The Court: How much?

The Witness: Well,—

The Court: How much are the sums stated on there? Look at it.

Mr. Van Riper: Let the witness have it.

Mr. Tyne: Does he have to see it, your Honor?

The Witness: You see, your Honor, I wanted to dispute one number here, the date. I remember it distinctly. If I didn't remember it distinctly I wouldn't talk about it.

The Court: How much did you receive?

The Witness: There is a $36,000 item here—

(1289) The Court: How much did you receive after the closing out of Browne Vintners?

The Witness: Immediately, nothing. I wasn't there. Nothing.

The Court: Shortly after? Shortly after?

The Witness: Well, I was in Florida. Mr. Reinfeld came down to see me. He was with Abe Bronfman and Harry Bronfman, from Montreal, Canada. He came to visit me at the Colonial Inn in Florida.

Q. And what? A. He says, "When we get back we will go over the thing."

Q. Go over what? A. Go over the—what happened?

Q. Go over what happened?

The Court: I asked you a question and you didn't answer it. How much money did you get?

The Witness: Sir?

The Court: How much money did you get after that?

The Witness: After that—

The Court: After the sale of Browne Vintners.

The Witness: After the sale of Browne Vintners, about $375,000.

The Court: That includes the $250,000?

(1290) The Witness: Yes, sir.

The Court: And when did you get the other $125,000?

The Witness: Oh, back—some of it running up to before the company was actually turned over—

The Court: Will you answer my question? I asked you how much did you receive after the sale of Browne Vintners.

The Witness: Three hundred—

The Court: You said nothing immediately after and then I said how much did you receive subsequent to the sale, and you said how much?

The Witness: $375,000.

The Court: All right. That includes the $250,000 which was the subject of so much discussion here?

The Witness: Yes, sir.

The Court: When did you get the $125,000? After the sale of Browne Vintners?

The Witness: Yes, sir.

The Court: When did you receive that?

The Witness: The dates on there, your Honor.

Q. Can't you tell? A. I got 70,000 I think it was in one week after December of '42. I know I got 36,000—that is on there as February. (1291) I didn't get it in February.

The Court: That's $106,000. Now, when did you get the other 19,000?

The Witness: Somewhere around that time.

The Court: Around the same time?

The Witness: Yes.

The Court: Around February—

The Witness: Yes.

The Court: All right, we will recess for five minutes.

(At this point a short recess was taken.)

Q. You told us, I think, Mr. Rutkin, that these figures here of 70,000, 36,000 and 19,000—are they the total sums that you received from Joe Reinfeld prior to the time of receiving this $250,000?

Mr. Van Riper: Pardon me, just a minute. I don't know that I object to it. May I see what it was that you used?

(Mr. Tyne exhibited a paper.)

Q. Is that so? A. Yes, sir.

Q. I ask you to look at this paper. You have listed on there that you received advances from Joe Reinfeld of

$5,000 in May 1940, which was before, and that's eliminated, (1292) on February 10, 1941 you say you received $36,000, on October 24, 1941, you received $10,000. A. Yes, sir.

Q. June 4 of 1942 you received $2,000, June 15, 1942, you received $2,000, is that so? A. Yes, sir.

Q. A total of $55,000? A. Yes, sir.

Q. And these figures here—in November you received $35,000, is that right? A. Yes, sir.

Q. And in November you received $35,000? A. Yes, sir.

Q. Now, did you mean that you received this money here all at once or at different times. A. At different times.

Mr. Van Riper: If your Honor please, I am sorry, but I don't understand—

The Court: He said at different times.

Mr. Van Riper: Yes, but when the District Attorney said, "this money here," I don't know which money that refers to.

Mr. Tyne: Well, I was referring to this paper here.

The Court: Well, what is it?

(1293) Mr. Tyne: With the listing—

Mr. Van Riper: That's your notes.

Mr. Tyne: Yes, a listing of 70,000, 36,000, 19,000.

The Court: That's the 125,000 I spoke about.

Mr. Tyne: Yes, sir, yes, sir.

Q. Did you mean to testify that you received these sums separately? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. And you didn't mean to convey in your testimony that you received the sum of $70,000 at once, is that so? A. Well, I told Joe I would like to have $70,000. He said al-

right and he gave it to me in a couple of weeks time, gave me those payments; twenty, you know,—

Q. Yes. A. —thirty-five, fifty, and twenty.

Q. Now, did you keep a record of the payments that he gave you? A. I did at one time.

Q. Did you make a record of the payments that he made, that he made to you?

The Court: He said, "I did at one time."

(1294) Yes. When? A. When he gave it to me.

Q. Do you have that paper? A. No, sir.

Q. What did you do with it? A. I don't know. I lost it.

Q. You lost it? A. Yes, sir.

Q. When did you lose it? A. A long time ago.

Q. Well when, when? When did you lose it? A. Well, I started looking for it at those meetings and I could never find it then.

Q. You could never find it? A. That's right.

Q. And you searched all over. A. Yes, sir.

Q. Just like you searched for these papers here? A. Yes, sir.

Q. D-9, D-11? A. Yes, sir.

Q. And you couldn't find that paper. A. No, sir.

Q. On which you made, you yourself made a record? (1295) A. Yes, sir.

Q. Couldn't find it at all? A. No, sir.

Q. But you found a paper that you say was made by Joe Reinfeld and given to you by him, is that so? A. Yes, sir.

Q. Now, did you put that paper in the trunk, the paper that you made a record of these numbers on, on which you made a record of these figures? A. I don't know where I put it, I don't recall. I looked all over for it.

Q. Looked all over for it? A. Yes, sir.

(1296) Q. And you had no way of checking these figures then that are on this paper here, D-9, is that so? A. No, sir.

Q. You accepted them as correct, is that so? A. Yes, sir.

Q. Did you deposit these moneys in any bank? A. No, sir.

Q. Well you are prepared to furnish proof that you made deposits for payment of these moneys that you say you had received, aren't you?

Mr. Van Riper: If your Honor please, I object.

Mr. Tyne: If the Court please, I would like to cross examine this witness on where he got these moneys.

The Court: All right. He got the money and didn't deposit it in any bank.

Q. You didn't deposit them in any bank? A. No, sir.

Q. Did you deposit these moneys anywhere? A. My vault.

Q. Where? A. The hotel I lived in.

Q. What hotel? A. At the time the Hotel Warwick.

Q. Where was that? A. 54th and Sixth Avenue, New York City.

(1297) Q. Is that where you lived at the time? A. What time?

The Court: At the time you got the $70,000.

The Witness: Yes.

The Court: How long did you live there after you got the $70,000?

The Witness: A couple of years, about two years.

The Court: Two years?

The Witness: Yes, sir.

The Court: Kept it in the vault there all the time?

The Witness: Well, I used it.

The Court: What did you do with the balance of the $125,000?

The Witness: Well, $35,000 of it I invested in the Colonial Inn in Florida when it was built in 1941.

The Court: No, where did you keep it? You didn't deposit it.

The Witness: No, sir.

The Court: Where did you keep it?

The Witness: I kept it with me; when I went to Florida I kept it in a vault in Florida.

The Court: Did you deposit the $250,000 you got?

The Witness: No, sir.

The Court: What did you do with that?

(1298) The Witness: I put that in my vault?

The Court: Where?

The Witness: I gave my sister-in-law up in Vaux Hall $100,000 to put in her vault.

The Court: Your sister-in-law in what?

The Witness: Vaux Hall.

The Court: You gave your sister-in-law $100,000 to put in the vault, and what about the rest of it?

Q. Vaux Hall, is that in Newark? A. Yes.

Mr. Van Riper: It is in Union County.

Q. What is your sister-in-law's name? A. Brautigam.
Q. Her first name? A. Gussie, Mrs. Gussie Grautigam.
Q. What is her address? A. 32 Mildred Terrace.

The Court: And what did you do with the other $150,000?

The Witness: I took it to my vaults in the hotel.

Q. You took it to your vaults in the hotel? A. Yes.

The Court: How long did you keep it there?

Q. Is this the Warwick Hotel? (1299) A. Yes.

The Witness: I don't recall.

The Court: Well, what did you do with it finally? You moved out of the Warwick, didn't you?

The Witness: Yes.

The Court: How much did you have in the vault in the Warwick when you moved out?

The Witness: One hundred fifty when I went in, I know I left there with about fifty.

Q. And when did you leave there with $50,000? A. When I moved into the Riviera Hotel in Newark.

Q. When was that? A. That was about 1944.

Q. What part of '44? A. I think the spring.

(1300) Q. Did you deposit this money, any part of this money in any bank? A. No, sir.

Q. In any account of any kind? A. No, sir.

Q. And you can't show a record of any kind of that money? A. No, sir.

Q. First, this $125,000, you can't show a record of any kind? A. No, sir.

Q. (Continuing) Of that money after you say you received it, is that so? A. Just—no, sir.

Q. And when you say you can't show a record of any kind, when I say you can't show a record of any kind, I mean you put it in no place where a record could be made of your having put it there. A. That's right, sir.

Q. That also applies to the $250,000?

The Court: Well, that is the thing we are talking about.

Mr. Tyne: No, I am talking about the $125,000 first.

The Court: I see.

Q. Does that also apply to the $250,000 that you received on May 11, 1943? (1301) A. Yes, sir.

Q. You did not deposit any part of that in any bank? A. No, sir.

Q. Or any—open up any account of any kind? A. I don't belong to any bank.

Q. Well, whether it be a bank, any institution. A. I don't belong to any institution.

Q. Well, whether or not you belong—you see, you are not answering questions. A. I am sorry, sir.

The Court: He didn't place it in any place where there is any record.

Mr. Tyne: Of any kind.

The Court: Of any kind. (Continuing) And had no record himself.

Q. You say you left the Warwick Hotel with $50,000, is that right? A. Yes, sir.

Q. That was in March of '42? A. That I moved out of the Warwick?

Q. Yes. A. No, I believe it was in '44.

Q. March, '44? And how much— A. (Continuing) I don't know if it was in March, but in '44, the spring or summer, I believe.

(1302) Q. Where is that $50,000, or any part of it, now? A. Why, I paid it out and used it up in my investigation and so on. I spent a lot of it for that.

Q. How about that $100,000 that you gave to your sister in Vaux Hall?

Mr. Van Riper: Sister-in-law.

Q. Sister-in-law. A. I paid off my obligations.

Q. You paid off your obligations. And that is not in existence either, is that so? A. No, sir.

Q. That has been expended by you? A. Yes, sir.

Q. All of the $250,000? A. Yes, sir.

Q. You, of course, had no concern with the government in connection with your concealment of these moneys.

Mr. Van Riper: Now, if your Honor please—

Q. (Continuing) insofar as its taxability was concerned, did you?

Mr. Van Riper: I object to the question including the word concealment. There is no testimony that it was concealed, and that is controversial, whether or not it was concealed. Certainly the $250,000 receipt wasn't concealed.

The Court: Certainly what?

(1303) Mr. Van Riper: Certainly the receipt of $250,000 in Kessler's office in the presence of a half dozen lawyers wasn't concealed.

The Court: Well, I think the terms was used, for its disposition afterwards.

Mr. Tyne: Yes, that's right.

The Court: Say, "The disposition you made of it."

Q. The disposition you made of it. I will rephrase the question. You had no concern about the government investigating you in connection with any of these moneys that you had? A. No, sir.

Q. (Continuing) insofar as its taxability was concerned. A. Absolutely none.

Q. Absolutely none. And of course that wasn't your motive in not putting it in a place where a record could be made of it? A. No, sir.

Q. And when it was in this—in this vault here, of course it earned no interest or anything like that, did it? A. No, sir.

Q. And you weren't prompted by any desire to conceal the fact that you had received $250,000 from Mr. Reinfeld? A. I couldn't conceal that.

Q. You couldn't conceal it? A. There were five attorneys and a couple of accountants (1304) there.

The Court: Do you think that attorneys are going to go around blowing about things they do for clients?

The Witness: No; it wasn't concealed, I just did business where people required cash, such as a gambling business I went into. In 1944, 1945, I paid quite an income tax on a gambling business.

Q. In 1944 you were in the gambling business? A. That's right; paid quite a bit of tax—I paid the government a lot of cash in '44 and '45, and I did business with people with cash for cash.

The Court: In the gambling business?

The Witness: Yes, sir.

The Court: Where?

The Witness: Passaic County.

The Court: Passaic County.

Q. Whereabouts in Passaic County? A. West Paterson.

Q. It wouldn't be in Hasbrouck Heights, Bergen County? A. No, sir, Passaic County.

Q. Who were your associates? A. In West Paterson?

Q. East Paterson, wasn't it? A. West Paterson.

Q. Who were your associates? (1305) A. In that venture?

Q. I beg your pardon—yes. A. Gerard Catena, a fellow, I can't think of his name, Anthony Guarino—

Q. Yes. Go ahead. A. Joe Adonis.

Q. Joe Adonis? A. Yes, sir. I think there was someone else there, and myself.

Q. Willie Moretti?

Mr. Van Riper: Please keep your voice up.

Q. Willie Moretti? A. No, sir.

Q. Also known as Willie Moore? A. No, sir.

Q. What was that combination called? A. It was no combination.

Q. What is that? A. It was just a partnership. I was in for that year and I quit voluntarily, quit the gambling business entirely.

Q. When you said you filed an income tax return, under what name was the income tax filed? A. I think it was G and something company—it was filed on a two letter company.

Q. I can't hear you. (1306) A. It was filed on some company with two letters, G and X or G and R.

The Court: Gee and Whiz.

Q. What is your business today? Is that your business today? A. No, sir.

Q. What is your business? A. Investigating and working on my case.

The Court: Haven't you any source of income outside of that?

The Witness: No, sir, I have no income.

The Court: No income on that?

The Witness: No, sir.

The Court: When is the last time you engaged gainfully in any occupation?

The Witness: I quit the gambling business in '45.

The Court: Yes.

The Witness: And I haven't been in any business venture of that kind since then.

The Court: Of any kind?

The Witness: Yes, sir, I bought and sold a corporation called The Tournament of Champions. That was the Tony Zale-Graziano fight that was here in Newark; I believe that was in '47. I sold that for $25,000. That was about all. I haven't done anything since then.

Q. You haven't been gainfully employed since that time?
(1307) A. I haven't had a chance to, I haven't got no time.

Q. No time. So since your bootlegging days, and that is going back to 1934, your total employment is represented, insofar as the record is concerned, by six or eight months with Browne Vintners and the Hotel venture in Florida, isn't that so, for one year? A. Yes, sir.

Q. Now, you said you bought an interest in the Colonial Inn, in Florida; what kind of a business was that? A. That was a big cafe, seating about 800 people, and with a very big floor show. It had Sophie Tucker and Joe Lewis, Harry Richman and Paul Whiteman on one bill.

Q. Anything else? A. Do you want to know if there was gambling there?

Q. Yes. A. Yes, sir.

Q. What was your interest in it? A. I had 15% of it.

James Rutkin—Defendant—Cross

Q. And when was that? Will you fix that time for us? A. We built in six weeks time; we started to build it in December, we finished it—

Q. When you say "we," who do you mean? A. Ben Marden and myself.

Q. Is that the famous Ben Marden who runs—

The Court: When was that?

(1308) The Witness: In 1940, and we finished it on January 20 of 1941. We only operated it that one year and we closed and sold it.

Q. Sold it? A. Yes; at a loss.

Q. Where did you get the money to go into that? A. $36,000 that was on that sheet.

Q. $36,000 of that went into— A. Yes, sir.

Q. —Colonial Inn? A. Yes, sir. Ben Marden was there when Joe Reinfeld gave me that $36,000. That was at my hotel.

Q. Do I understand you to say that that was in 1940? A. That was about one week before the money from Seagram was actually turned over to Browne Vintners. The money wasn't turned over until the very last day, it was New Years Day of the year, that is when the completion of the sale was, and Joe had told me that, and I knew that to be so, they were rushing it through to get it in for tax purposes before the year run out, and they couldn't complete it, the search and everything on properties, until the very last day of 1940. But I had to go down before. So Joe Reinfeld told me he will meet me in Florida in a few weeks; and he did, he came there opening night.

Q. The opening night? (1309) A. Yes, sir.

Q. Were you in partners with Joe on that, too? A. No, sir.

Q. That is one thing you weren't in partners with him on, huh? When you say that, the $35,000 that you got

from Joe Reinfeld, appears on this paper, was used to invest in the Colonial Inn? A. Yes. I see the date there says February.

Q. Yes, '42. A. That is why—that's a mistake there. I said that myself when I looked at it, that isn't proper.

Q. Yes. You are the only one who could notice that mistake, aren't you?

Mr. Van Riper: I object to that, if the Court, please.

Mr. Tyne: All right, I withdraw it.

A. See, I want all the facts to come out, Mr. Tyne, I don't want to conceal anything.

Q. No. Neither do I. You sat through these meetings, did you not, series of meetings, which led up to the payment of $250,000, without saying a word? A. Yes, sir.

Q. What? A. Yes, sir.

Q. At the termination of all these meetings you said to (1310) Joe Reinfeld, "How about me?" or sometime during the period of meetings, is that right? A. Yes, sir.

Q. Not represented by a lawyer, is that right? A. Yes, sir.

Q. Not represented by an accountant? A. No, sir.

Q. You say, then, that these figures, these $250,000, were arrived at on the basis of papers that were given to you by Joe Reinfeld? Is that right? A. Will you repeat that, please?

Q. (Question read by the reporter.) A. I wouldn't say that.

(1311) Q. You didn't say that. You say you had conversations with Joe Reinfeld before the meeting commenced, right? A. Yes, sir.

Q. And after the meeting commenced you didn't say a word at any time. A. No, sir.

Q. Until you said, "How about me" or words to that effect. A. Something of that kind, yes.

Q. And you admit being in Lou Holtz' cellar, don't you? A. Some cellar—recreation room.

Q. Whether it is or not you admit being there? A. Yes.

Q. With Stacher and Zwillman? A. Yes, sir.

Q. Stacher was associated with Zwillman in his bootlegging operations? A. Yes, sir.

Q. Was he one of the pushers—strike it out—one of the promoters for Browne Vintners as well? A. Yes, sir.

Q. He worked with you? A. He worked with the family without a salary.

Q. And you didn't say a word of any kind, is that right? (1312) A. No, sir.

Q. You weren't going to squeal on Joe or anybody for alleged mistakes, honest mistakes.

Mr. Van Riper: I object to that, if your Honor please, about squealing.

The Court: I sustain the objection.

Q. Is that right?

The Court: No, I have sustained the objection.

Mr. Tyne: Oh, I am sorry, sir.

Q. How many meetings were there?

The Court: Now what are you talking about now, in Holtz' house or what?

Mr. Tyne: Yes, sir, starting with Holtz' house.

Q. How many meetings all told.

The Court: Do you understand that question?

The Witness: Yes, sir.

Q. How many meetings were there all told in Holtz' house until the final payment of $358,000 was paid off?

The Witness: I believe half a dozen meetings.

Q. Half a dozen meetings? A. Yes, sir.

Q. And they lasted for varying periods of time, isn't that so? A. Yes, sir.

(1313) Q. You say you were still friendly with Joe at that time? A. Yes, sir, very.

Q. Do you deny that you came to Joe Reinfeld in 1941 or thereabouts and asked for $10,000 to open up a tavern here in Newark? A. That is not so.

Q. That is not so? A. No, sir.

Q. Of course, you wouldn't lie about any of these things.

Mr. Van Riper: Now I object.

The Court: No, no. If he lies he is perjuring himself; if he doesn't lie he is telling the truth. The Jury will judge.

The Witness: To the best of my ability.

Q. Well, let's see. Do you remember testifying before Judge Bromberger in New York in 1945? A. I do.

Q. Did you tell the truth then?

Mr. Van Riper: If your Honor, please, I object.

The Court: No.

Q. All right.

Mr. Tyne: Want to look at this?

The Court: Now, is this a contradiction of something that he has said here today?

Mr. Tyne: Yes, sir.

(1314) The Court: All right.

Mr. Tyne: If it isn't your Honor can hit me with the gavel.

The Court: I certainly will because there has been a lot of stuff read here that was just a waste of time.

Q. This was March 8, 1945, is that so? A. About that time.

Q. You were first sworn, weren't you, to tell the truth? A. No, sir.

Q. You weren't? A. No, sir, I was a voluntary witness.

Q. Didn't you testify under oath? A. No, sir.

The Court: You didn't testify under oath?

The Witness: No, sir.

Q. Now, let's look at that "James Rutkin, having been duly sworn by Judge Bromberger, testified as follows." That's what the paper says.

Mr. Tyne: All right, I will prove it in fact.

The Court: Were you sworn before you started to give your testimony over there?

The Witness: To the best of my recollection—

The Court: Don't be confused by thinking of a possible subpoena—you may have gone there voluntarily (1315) but when you got there weren't you sworn?

The Witness: Absolutely not. I was there alone. There was no one to swear me. It was in a private office. We had a chat in regard to a retail liquor license.

The Court: No, no. This is a record.

The Witness: Yes, that was what we talked about in regard to this other fellow's liquor license that was being investigated by Justice Bromberger's office and I was one of many witnesses.

The Court: Mr. Van Riper, I am going to ask you to investigate this and find out whether he was or not and then I think we can stipulate, after you have discussed the matter with your client, of course, without bringing somebody over with formal proof.

Mr. Tyne: I might say I have the stenographer here who took the testimony.

The Witness: Then I must have made a mistake.

The Court: Your recollection was that you had not been sworn.

The Witness: That's right.

The Court: But if the record shows that you were sworn you are willing to accept the record.

The Witness: Yes.

(1316) The Court: Is that satisfactory to you, Judge Van Riper?

Mr. Van Riper: Yes, sir. I don't know anything about it. The witness was there.

The Court: I mean is it satisfactory to you that your client should consent to that?

Mr. Van Riper: Yes, sir.

Q. Now you were asked this question under oath by Judge Brumberger:

"Do you know Abner Zwillman, nicknamed 'Longie'? Yes, sir, very well.

"Were you in business with him? No.

"Question: Were you associated at all with him in any enterprise? Answer: No, sir.'

"Question: Did you act for him in any manner, shape or form, directly or indirectly in anything? Answer: I never socialized or fraternized with him in any way at all."

You so testified, didn't you, under oath? A. If it is in there I must have.

Q. Was it a lie, were you lying then or are you lying here today?

The Court: No, is it the truth?

(1317) The Witness: I was protecting a friend's liquor license.

Q. You were under oath to tell the truth. A. I told a white lie over there.

Q. You were lying then, is that right?

The Court: Wait a minute—a white lie?

The Witness: Well, I wasn't under any pressure—

The Court: But you were under the pressure of swearing in the presence of the ever living God to tell the truth.

The Witness: There was an honest fellow over there being persecuted by the License Division.

The Court: Oh, no, wait a minute. Don't be making any side speeches like that. The question is whether you, being sworn, said that. Did you or not?

The Witness: I said that.

The Court: All right, that's all we care about.

The Witness: Sorry. If I realized I was under oath I would have never said that.

The Tyne: I ask that that be stricken out if the court please.

The Court: No, I will let it remain but the Jury will know just exactly what value to place upon it, and what construction to place upon it.

(1318) Q. "Were you ever interested in the operation of the Reo Distillery Corporation at Newark? Answer: No, sir.

"Question: Ever represent them in any capacity in the sale of their product? No, sir.

"Question: Do you know whether Philip Coe was interested in the operation of that company? Answer: I know he was.

"Was he the owner? One of the owners.

"Who were the others, do you know? A. Zuckermann was one of the owners.

"Oh, Zuckermann? Answer: Zuckermann.

"Which Zuckermann? Ben Zuckermann, and Joe Coe. I believe they were the owners.

"Question: You had no association with them whatever directly or indirectly? No, sir. Answer: No, sir."

Now, isn't this Ben Zuckermann the same man you testified to was one of the defendants, in Boston?

Mr. Van Riper: Now, I object. If the court please, I submit that this testimony has nothing to do with his association with Zuckermann in any place except (1319) in this Reo Distilling Company.

Mr. Tyne: Wait a minute, now.

The Court: Is that the only question asked?

Mr. Tyne: The question is, "You had no association with them whatever, directly or indirectly? Answer: No, sir."

The Court: Well, I think that it is subject to the construction that you placed upon it, but it is also subject to the construction—

Mr. Tyne: I will concede that, your Honor.

The Court: —that Judge Van Riper placed upon it.

Mr. Tyne: Yes.

The Court: All right. I shall sustain the objection.

Mr. Tyne: All right.

Q. "Question:" The question was asked you also by Judge Bromberger: "Do you know Joseph Stacher? Answer: Very well.

"Question: He is known as Doc Rosen? Answer: I knew him as Doc. Joseph Stacher is his name.

"Question: He is a well known, rather reputedly well known racketeer? Answer: I guess you are right.

"Question: What is his racket or rackets? Answer: I guess you know as much as I do from reading and hearing and (1320) so on.

"What do you know him to be? Well, I guess"—

"Question: Bookmaker. I guess I never done any business directly or indirectly with him. I do meet him occasionally in the restaurant, and he is quite a quick, witty fellow."

You testified that way, did you not? A. Yes, sir.

Q. "Question:" By Judge Bromberger, the same hearing: "Was Zwillman interested in bootlegging with you? Answer: No, sir. He was only a boy. He is a much younger fellow than I am.

"Question: How old is Zwillman? I have never seen him. Answer: I don't know how old he is. I believe he must be five years younger than I am."

Did you so testify? A. If it is in the record, I did.

The Court: I think we will recess now; it is such an oppressive day and I think we are all pretty well exhausted; so we will recess until ten o'clock tomorrow morning. The Jury will be excused first.

(Adjourned till Friday, October 20, 1950 at ten o'clock a. m.)

Colloquy of Court and Counsel

(1321) Newark, New Jersey,
Friday, October 20, 1950.

(Trial resumed pursuant to adjournment.)

(Appearances as noted before.)

JAMES RUTKIN, resumed.

Cross-examination (continued) by Mr. Tyne:

Q. Mr. Rutkin, you testified yesterday in connection with the Dempsey-Vanderbilt Hotel that you got $120,000 from Mr. Reinfeld, $60,000 of which was Mr. Reinfeld's and $60,000 was applied to your account, is that right? A. Yes.

Q. You went into the Dempsey-Vanderbilt—

Mr. Van Riper: Now, pardon me just a minute. I am sure Mr. Tyne doesn't mean to misstate the testimony. Did I understand him to say $60,000 was to apply to your account? The testimony is it was a loan.

The Court: No, I think the testimony was rather confused on the point. The thing that seems to stand out is that $120,000 in cash was given by Reinfeld to Rutkin and that $60,000 of that represented Rutkin's money and $60,000 Reinfeld's money. Now just what the nature of the transaction was remains confused.

Mr. Van Riper: My recollection is there was some further testimony as to how the $60,000 became his money.

(1322) The Court: Well, he said it belonged to him from the investment in the Browne Vintners.

Mr. Van Riper: I don't want to disagree with the court—

The Court: Let's straighten it out. Go ahead.

Mr. Van Riper: Will you straighten it out with him?

Q. Didn't you just say yes to my question that the 60,000 applied to your account?

The Court: Let me ask you what was the arrangement made with Rutkin so far as the $60,000 which represented your share of that investment in the Dempsey-Vanderbilt Hotel was concerned.

(1323) The Witness: Your Honor—

The Court: Speak up so the jury can hear you.

The Witness: Yes, sir. I spoke to Mr. Reinfeld the night before, previous, and he said, "Joe, I am leaving on the 4 o'clock plane, I have a reservation, and I want $120,000 for Florida." He said, "All right. How about one or two o'clock?" and the arrangements were made. Well, when I got up to the office Mr. Cohen was there alone. He said, "Joe had to leave, he couldn't come back. But you will have to stop doing business this way. I don't know if Joe owes you this money." He said, "Here, give this to Jim." I don't know—

Mr. Tyne: You see, that's the conversation that was objected to.

The Court: All right, he got the $120,000. Now did you have any conversation with Reinfeld about the $60,000 which represented your share of it?

The Witness: Yes, sir.

The Court: What was the conversation with Reinfeld?

The Witness: Mr. Reinfeld said, "Jim, we won't touch any figures. I will regard your $60,000 and I am just loaning you $60,000, I am laying out the $120,000, and you will owe me $60,000 out of it," that

Mr. Reinfeld said was there; and there would have been no signing of anything. I never would have signed—

(1324) Mr. Tyne: I object to that and ask that it be stricken.

The Court: Just the conversation. That was the conversation you had with him?

The Witness: That was the conversation. "I'll lay out the $120,000 and you will owe me $60,000."

The Court: All right.

Q. You testified you went into this Dempsey-Vanderbilt venture and you sustained a loss— A. Yes, sir.

Q. —of $40,000? A. Yes, sir.

Q. $20,000 of which was yours and $20,000 was Mr. Reinfeld's? A. Yes, sir.

Q. And, of course, during this time you maintained openly that you had an interest in Browne Vintners, isn't that so? A. Yes, sir.

Q. And a very substantial interest in Browne Vintners? A. Just an interest.

Q. Just an interest? A. Yes, sir.

Q. Well, you maintained that openly? A. Yes, sir.

Q. Just didn't destroy it? A. Yes, sir.

(1325) Q. This transaction here; is that right? A. Yes, sir.

Q. And you testified you got more money on account of the payment of your interest in Browne Vintners later on?

Mr. Van Riper: Now, I object to that because that implies that this money was a payment of his interest in Browne Vintners. He did testify he had other money which was a payment, but not that this was a payment of his interest in Browne Vintners.

Mr. Tyne: No, no, no; he said he openly maintained that he had an interest in Browne Vintners at that time and continued to maintain it.

Q. Is that so? A. Yes, sir.

Q. And that other moneys were paid later on to you; you had testified in 1940, '41, and so on? A. Yes, sir.

Q. In connection with this interest that you— A. Advances, yes, sir.

Q. Well, in connection with this interest you openly maintain you had in Browne Vintners. A. Yes, advances on my percentage in Browne Vintners.

Q. And your interest in Browne Vintners? A. Yes, sir.

The Court: His percentage or interest. Will you excuse me a minute, please?

(Short interruption.)

(1326) Q. Now, you remember we were discussing the testimony you gave before Judge Bromberger in New York? A. Yes, sir.

Q. In 1945? A. Yes, sir.

Q. And did you testify before—strike it out. Did you not give the following testimony before Judge Bromberger in March of 1945:

"Question: When did you sell your interest out in the Dempsey-Vanderbilt? When did you get rid of that? Answer: About 1936 or '37.

"Question: And you got slightly over 70,000 for that? Answer: Yes.

"Question: And you were making 15,000, a year, approximately? Answer: Yes, sir, salary check.

"Question: You say you are worth approximately $50,000 now? Answer: Yes.

"Question: Where is the difference between over $70,000 that you got when you sold? Answer: Oh, I don't know.

"Question: Gamble it? Answer: I guess I spent it; gambled.

"Question: Did you ever have any interest other than that (1327) in the Dempsey-Vanderbilt? Answer: No, sir."

Did you so testify? A. Yes, sir.

Q. Before Judge Bromberger? A. Yes, sir.

Q. In New York? A. I guess so.

Q. Under oath? A. I didn't realize at the time.

Q. Well, you were duly sworn, were you not? A. No, sir.

The Court: Let's not have any dispute about this thing. Mr. Van Riper, in response to my question yesterday, said that he would waive the proof and admit for his client that he had been sworn. Do I understand that to be so?

Mr. Van Riper: Yes, sir, on the representation of Mr. Tyne—

The Court: No, aside from representation or anything else.

Mr. Van Riper: I said it, yes, sir.

The Court: Mr. Tyne had the stenographer here and was ready to prove it.

(1328) Mr. Van Riper: We do not raise any question because I understand the the record shows that.

The Court: The record shows this present defendant at that time was sworn when he testified before Judge Bromberger?

Mr. Van Riper: Yes, sir. So this record shows—

The Court: No, no. Now don't let's quibble about it. I am asking you, yesterday when the reporter was here, I asked you if you admitted it for your client, that he had been sworn, or would you require the formal proof. My impression was that you said that there was no question about the fact that he was sworn.

Mr. Van Riper: I said it very clearly, sir, if your Honor please.

The Court: All right.

Mr. Van Riper: And I do not retract from it, I reiterate it again today. I just wanted to make it clear because I rely upon the record, also.

The Court: I don't want the question of reliance upon the record; it is easy for you to determine whether or not it was so and I want a categoric statement which I understood I had from you yesterday, that there is an admission by you, as attorney for this defendant, that (1329) at the time he testified in New York he had been sworn.

Mr. Van Riper: Of course, as your Honor well knows I have no personal knowledge.

The Court: I know that, but you see yesterday when I asked you that when the stenographer was here you made such an admission.

Mr. Van Riper: Yes, sir.

The Court: All right. That will stand on the record? Very good.

Mr. Van Riper: Yes, sir, and I will not retract from it. I will stand by it.

The Court: All right.

Q. Well, were you lying when you testified before Judge Bromberger?

The Court: No, don't put it that way, please.

Q. You so testified before Judge Bromberger, didn't you? A. I guess so.

Q. Well, did you or didn't you?

The Court: What is your best recollection?

A. Yes, sir.

Q. And of course that testimony was not given in connection with the persecution of any individual who might have been under investigation by Judge Bromberger? A. I was not under investigation.

The Court: No. Was anybody under investigation (1330) at that time?

The Witness: A liquor license.

A. But that had nothing to do with the liquor license to anybody, that testimony I just read to you.

The Court: It speaks for itself.

Mr. Van Riper: Now, your Honor please—

Mr. Tyne: All right.

Q. Did you have any brokerage accounts in the year 1943? A. Yes, sir.

Q Was there a brokerage account, was one of the brokerage accounts that you had in your own name? A. Yes, sir.

Q. And did you also have a brokerage account under the name of Joe Byrne? A. No, sir.

Q. You did not? A. No, sir, to my best recollection I did not.

Q. Your best recollection you did not? A. I had it only under my own name.

Q. Now, did you have a brokerage account in the name of James Rutkin with Leopold Spingarn & Company? A. Yes, sir.

Q. And in December of 1943 did you deposit $20,000 cash in that account?

Mr. Van Riper: Now, just a minute, if the (1331) Court please, if this is material I have no objection to it, but at the moment I don't see the materiality.

Colloquy of Court and Counsel

The Court: What is the materiality?

Mr. Tyne: Well yesterday, sir, this witness testified he did not deposit any of the funds, any of the moneys that he received from Mr. Reinfeld, this $125,000 received prior to May 11, 1943 and the $250,000 received on May 11, 1943. Now this testimony goes to that issue. There is additional moneys that this man received and I am now questioning him on those moneys.

The Court: Well, I still don't get the purpose of it. Do you want to prove that he did not tell the truth about the moneys he received? What is the purpose?

Mr. Tyne: The purpose is to show that he had additional moneys in 1943 over and above the $250,000.

The Court: Well, has he testified that he did not have.

Mr. Tyne: No, he said he did not deposit—

The Court: Well, he may not have deposited it. Evidently he keeps it, as they say, in circles in which I do not travel, keeps his dogs stashed in a safe deposit vault, I read those things.

Mr. Van Riper: I know the author, your Honor.

The Court: What do you want to prove by it?

Mr. Tyne: I want to prove he had additional income.

(1332) The Court: Has he denied it?

Mr. Van Riper: No, sir.

Mr. Tyne: He hasn't been asked specifically that question.

The Court: If it is not in contradiction I won't allow it.

Q. Did you receive additional moneys in 1943?

Colloquy of Court and Counsel.

Mr. Van Riper: Now, if your Honor please, I object to that as being beyond the scope of the indictment.

The Court: I don't see how that is related to this issue.

Mr. Tyne: This is an income tax evasion and if we show that he received any moneys in 1943 and didn't report them on his income tax return, or they were not reported and the tax not paid on it, it is certainly a part of the issue here.

Mr. Van Riper: The indictment, your Honor please, alleges this specific payment.

The Court: Well, I do not think it is confined to that.

Mr. Van Riper: My assistants remind me of the fact that there was a bill of particulars in the matter. Have you got that? Let's have it.

The Court: Of course the United States Attorney will be limited by his bill of particulars unless this has (1333) come to his attention since the filing of the bill of particulars.

Mr. Tyne: On the question of the bill of particulars I was asked specific questions relating to the $250,000.

The Court: Let's find out what you were asked They are protesting now.

Mr. Van Riper: Do you have a copy of it, Mr. Tyne, of the bill of particulars?

The Court: I don't have a copy of this in the files here.

Mr. Van Riper: Unfortunately we don't seem to have it.

Mr. Tyne: I am pretty sure I have one here.

The Court: If it is not very important I wouldn't waste any more time.

Colloquy of Court and Counsel

Mr. Tyne: I would like to state this additional reason, sir, and it goes to the question of concealment of the moneys received by the defendant on May 11, 1943 the $250,000. Surely this testimony is material and relevant for the consideration of the jury on the question of concealment as to whether or not—

The Court: No, he has said that at no time did he ever have a bank account, nor did he deposit it in any institution of any kind. Now he hasn't said that—the (1334) testimony here—anything about this $20,000 or where he got it.

Mr. Tyne: Well, may I ask him whether this money here that he deposited in these brokerage accounts was part of the $250,000. Then I think the jury would have a right to draw such inference as they may desire on the question of concealment.

The Court: Well he had already admitted that the $250,000 which he got he put in his partner's vault, sent $100,000 up to his sister-in-law to put in his vault. What more do you want? What more are you trying to show?

Mr. Tyne: Well we can show that he put money in under another name than his true name.

The Court: Is it under an assumed name—the name Rutkin—that is his name.

Mr. Tyne: Yes, that is one account.

The Court: Well, if you have anything else produce it.

Mr. Van Riper: We seem to have found the interrogatories, if your Honor please, or the bill of particulars. Do you want to check those with me, Mr. District Attorney?

"Q. State from whom it is alleged and will be charged at the trial the defendant received in the

year 1943 'other income $250,000' as alleged in said indictment. (1335) A. Joseph Reinfeld.

"Q. State specifically the date or dates upon which said sum of the items related which total said sum were received by the defendant.

"The sum of $250,000 on or about May 11, 1943."

The other questions have to do with being paid in Kessler's office.

Mr. Tyne: The questions are restricted to the payment of the $250,000.

The Court: Yes, are you contending now that this $20,000 is not part of that?

Mr. Tyne: No, sir, we are not contending that.

The Court: All right, then I do not see the purpose of it. I sustain the objection.

Mr. Tyne: Well, may I phrase the question.

The Court: You may phrase any question you want and then I will rule on it when you ask it if it is objected to.

Q. Did you have a brokerage account under the name of Joe Byrne with Merrill, Lynch, Fenner & Bean? A. No.

Q. In which you deposited the sum of $20,000 in 1943? A. No, sir.

Q. You did not? A. No, sir.

(1336) The Court: Under the name Joe Byrne.

Mr. Tyne: Joe Byrne.

The Court: He said no.

(1337) Q. Now I believe you testified in answer to one of Mr. Van Riper's questions that you were convicted of crime other than the one that you referred to as occurring up in Massachusetts and that you served a year and a day or thereabouts. A. Yes, sir.

Q. In 1920 you were convicted of larceny and receiving stolen goods, weren't you? A. Yes, sir.

Q. And did you use a gun at that time?

Mr. Van Riper: Now, if your Honor please, I object to that as entirely—

The Court: No, I shall sustain the objection.

A. No, sir, no, sir. or at any other time.

Mr. Van Riper: Please don't volunteer. When I arise to object, wait until the court rules.

Q. And in 1927 you were convicted of atrocious assault and battery, weren't you? A. Yes, sir.

Q. Any other crimes?

The Court: Any other convictions.

Q. Any other convictions? A. Not that I can think of. no, sir.

Q. Not that you can think of. I thought you said in answer to Mr. Van Riper that you were convicted of three (1338) crimes, other than the one that you were convicted of up in Boston. A. No, sir. I think I said three times.

Q. Three times? A. I may have said three crimes, I meant three times.

Q. Oh, you meant three times. A. Yes, sir.

Q. Now, this time in 1927, that conviction, you were in the bootlegging business, were you not? A. Pardon me?

The Court: Which conviction is that?

Mr. Tyne: In 1927.

The Court: I mean what for

Mr. Tyne: Atrocious assault and battery.

A. Yes, sir.

Q. And was th. in connection with bootlegging operations?

Mr. Van Riper: Now, if the court please, I understand the rule to be that you can show a conviction, you can show the sentence, and you can show what the record shows on it, but you can't cite a case.

The Court: I don't think it is material.

Mr. Tyne: Well, it may be material, sir.

The Court: No, I won't allow it.

Mr. Tyne: All right.

(1339) Q. Now, this breaking, entry and larceny, was that in connection with the Public Service?

Mr. Van Riper: Now, if the court please,—

The Court: I don't see how that is material.

Mr. Tyne: All right.

(Side conference between counsel.)

Mr. Tyne: I said breaking, entry and larceny. It was larceny and receiving.

The Court: Larceny and receiving.

Mr. Tyne: That's right.

(Further side conference between counsel.)

Mr. Tyne: May I have a minute, sir?

The Court: Yes.

Mr. Tyne: No further questions.

Mr. Van Riper: Just one or two questions, please.

Mr. District Attorney, may I look for a moment, please, at the record which you used with reference to the New York testimony?

Mr. Tyne: I don't think I should show counsel my personal file.

The Court: What is your objection?

Mr. Tyne: It is part of my file, part of the Internal Revenue file. If counsel looks at it I would (1340) like to have the whole thing in evidence.

The Court: Suppose, Judge Van Riper, you tell Mr. Tyne what you want and refer only to that part of it so there will be no objection on the ground it is part of the Internal Revenue files.

Mr. Van Riper: All right. What I really want to look at, if your Honor please, and Mr. Tyne has been very helpful, yesterday when the witness was asked, "Did you testify in New York," and so forth, I think Mr. Tyne said before Judge Bromberger; Mr. Tyne said we may now stipulate on the record that Mr. Bromberger, or Judge Bromberger, whatever it may have been, was not then sitting as a Judge but that he was sitting as a Commissioner of Investigation for the City of New York.

The Court: With power—

Mr. Van Riper: With power to administer an oath.

Mr. Tyne: Yes, sir.

The Court: All right, it is on the record.

Redirect examination by Mr. Van Riper:

Q. Mr. Rutkin, just one question. I show you this trunk here, is this the trunk that you referred to yesterday as being the trunk in which you found these papers, D-11 and D-9? (1341) A. I didn't find it; that is the trunk they come from, yes, sir.

Q. Who was with you when the papers were found? A. My daughter and her husband, my son-in-law.

Q. What is your son-in-law's name? A. Arthur Kaplow.

Q. Was he actually there when the papers were found? A. Yes, sir.

Q. Who took them out of the trunk? A. I believe it was my son-in-law.

Q. And gave them to you? A. Yes, sir.

Mr. Van Riper: That's all.

The Court: Wait a minute.

The Witness: I'm sorry.

The Court: As I understand it, Rutkin, you kept no books at any time.

The Witness: I never kept any books, I was never given any, I never had an accountant, I never had a bookkeeper. Joe Reinfeld was the trustee.

The Court: I am not talking about that. You had other interests, too, you know, that you testified to.

The Witness: No, sir, I never did.

The Court: You never kept any books?

(1342) The Witness: No, sir.

The Court: And in this business in which you were concerned with Adonis and the other lads up in Passaic County, you kept no books up there?

The Witness: There was a bookkeeper up there.

The Court: There was a bookkeeper up there?

The Witness: Yes, sir.

The Court: But you didn't keep books of your returns?

The Witness: No, sir.

The Court: Not at any time?

The Witness: No, sir. Thank you.

The Court: Anything further?

Mr. Van Riper: No, sir.

Mr. Tyne: May I ask a question, I overlooked this, sir.

The Court: Yes.

James Rutkin—Defendant—Recross

Recross examination by Mr. Tyne:

Q. I show you G-1 in evidence, identified as the original—

Mr. Van Riper: That is the return for '43?

Mr. Tyne: Yes, sir. Do you want to look at it?

(1343) Mr. Van Riper: All right.

Q. Further identified as the Income Tax return which you filed for the year of 1943, and ask you by whom it was prepared? A. This was—

Q. First let me ask you, is that your signature? A. Yes, sir.

Q. You signed it? A. Yes, sir.

Q. And you affirmed or swore to it, did you not? A. Yes, sir.

Q. Now, who was I. George Goldstein, whose name appears on this exhibit to the left of your signature? A. He filed my income tax for me that year.

Q. Did he prepare this income tax return for you? A. From what I told him.

Q. From what you told him? A. Yes, sir.

Q. And I. George Goldstein is a certified public accountant in Newark, is he not? A. Yes, sir.

Q. And he has been your accountant? A. No, sir.

The Court: Did he perform any other services (1343) for you except filing this?

The Witness: No, sir.

The Court: Did he ever file any other income tax reports for you?

The Witness: A few, yes, sir.

The Court: Well, he did perform other services.

The Witness: Yes, but that was all, just filed the income tax from what I told him.

The Court: Aside from the preparation of the income tax returns he did not perform any other services for you?

The Witness: No, sir.

By Mr. Tyne:

Q. Did he prepare any other income tax return for you other than this one for the year 1943? A. Yes, sir.

Q. Since then? A. Yes, sir.

Q. Well, during that time did he do any other work other than the preparation of your returns? A. No, sir.

Q. At no time? A. No, sir.

Q. When you say "No, sir," you mean he did not?

(1345) A. He did not, yes, sir.

The Court: Not previous to the filing of the 1943 return?

The Witness: No, sir.

The Court: Now, so there will be no confusion,—you see Mr. Tyne asked you a question which should be answered no for the content of it, but the form, the answer no would be contradictory to that. Let's try and get the thing straight. As I understand your testimony, is that the only service that this Goldstein performed for you at any time consists of preparing income tax reports for you, which he prepared from information told to him by you?

The Witness: Yes, sir.

The Court: That's all he ever did for you?

The Witness: Outside of in Florida when he was there with Mr. Cohen at Mr. Reinfeld's request, he sent them both down there to set the books up and set the company in shape. That is the first time I met him.

The Court: Then aside from that he did nothing except the preparation of the income tax reports from information which you gave him?

The Witness: No, sir.

Q. And did J. George Goldstein prepare accounts for your (1346) other associates?

Mr. Van Riper: Now, if the court please—

Q. (Continuing) During this period of time you testified to?

Mr. Van Riper: —I don't know what the answer is going to be and I don't know that I care because I can't see that it is material.

Q. And how about the G & R Trading Corporation?

The Court: I think that might be material.

Mr. Van Riper: All right. Now he has something specific.

The Court: Did he prepare the returns for G & R Trading, or whatever that thing was called?

The Witness: Yes, sir.

Q. That was this gambling combine? A. Yes, sir.

Q. (Continuing) That you referred to yesterday? A. Yes, sir.

The Court: Were you part of that?

The Witness: Yes, sir.

The Court (Continuing): Were you part of that combine? So he did do some work indirectly for you through the G & R?

The Witness: Yes, sir.

(1347) The Court: Now, were you in any other business, whether incorporated or not, for which Goldstein did work?

The Witness: No, sir.

Q. Well, did Goldstein do any work in connection with the Colonial Inn that you said you opened up? A. No, sir.

The Court: How long did the G & R thing last?

The Witness: To the best of my recollection, about six months.

The Court: Just for that one year, then, that he did the returns for the G & R combine?

The Witness: Yes, sir.

Q. Well, were you connected with any other trade names? A. No, sir.

Q. Did I. George Goldstein prepare the information return for G & I combine, or G & R partnership?

Mr. Van Riper: G & R, you mean.

A. I don't know, I disconnected and disassociated myself right after that. I have never been in that business since and never will be.

The Court: Which business?

The Witness: Gambling business.

The Court: Oh, gambling.

Mr. Tyne: No further questions.

(1348) Mr. Van Riper: All right, Mr. Rutkin.

(Witness excused.)

Mr. Van Riper: Mr. Kaplow, please.

Arthur Asher Kaplow—for Defendant—Direct

ARTHUR ASHER KAPLOW, called and sworn on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Van Riper:

Q. Arthur, how old are you? A. 24.

Q. And you are married to one of Mr. Rutkin's daughters, are you not? A. Yes, sir.

Q. And you live with your family where? A. I live with my wife and my father-in-law at 201 Midland Place, Newark, New Jersey.

Q. I see. Now, I show you this trunk here—

Mr. Van Riper: I suppose we ought to give it a number.

The Court: Well, are you going to put it in evidence?

Mr. Van Riper: I think I will, sir; yes, I think I shall offer it.

The Court: You better mark it, then.

(1349) The Clerk: Defendant's Exhibit 13 for identification?

Mr. Van Riper: No, I offer it, the defendant said that is where he found it. I offer it.

The Court: Mark it in evidence.

(Received and marked Exhibit D-13.)

(1350) Q. I show you this trunk marked exhibit—

The Clerk: D-13.

Q. (Continuing)—D-13, and ask you if you have seen that trunk before? A. Yes, sir.

Q. Where has that trunk been located? A. That trunk has been located—

Q. So far as you know. A. —in the cellar of our home at 201 Midland Place since Jim moved out of the Hotel Riviera in, I believe it was, the fall of 1948.

Q. And whose trunk is it? A. It is my father-in-law's, James Rutkin.

Q. Now then, sometime ago were you present with your father-in-law—did you participate with your father-in-law in making a search of that trunk, going through it? A. Yes, sir.

Q. And was anything found at that time?

Mr. Tyne: Oh, I object, if the Court please.

The Court: No, I will allow it.

Mr. Tyne: May I have the time fixed?

Mr. Van Riper: Yes, sir.

Q. Tell us about when. A. Yes, sir. It was about a week preceding this trial.

Q. Preceding the start of the trial? (1351) A. Yes, sir.

Q. I see. All right. And you say something was found. Now, what was found? A. We—papers were found.

Q. All right. Well, now, who was working in the trunk? A. My wife, my father-in-law and myself.

Q. All right. And who actually found it? A. I did.

Q. And where did you find it? A. I found the papers in the clothes—the compartment for the clothes, in a sock tossed in among other shoes and socks and a couple of shirts, maybe some under clothes.

Q. Was there anything there besides two papers? A. Yes, sir. I believe there were some cablegrams or other papers.

Q. Do you have any definite recollection as to cablegrams or telegrams? A. Yes, sir. I read one.

Q. You did read one? A. Yes, sir.

Q. And you recall reading it? A. Yes, sir.

Q. Now then, what did you do with these papers? You say you took them out of the sock? A. Yes, I did.

(1352) Q. And what did you do with them? A. I looked at them and I handed them to my father-in-law and I asked him if these were of any value to him, did this pertain in

any way, shape or form to what we were looking for. I really didn't know.

Q. And what did he say? A. Well, his exact words, quote, "My God, this is exactly what I have been looking for for quite some time."

Q. Now do you have the keys to the trunk? A. Yes, sir.

Q. And did you have them before? A. Yes, sir.

Q. And did your father-in-law also have keys to the trunk? A. No, sir, we kept them on my desk, to which my father-in-law had access at any time.

Q. I see. And these are the keys that go with it? A. They are.

Mr. Van Riper: In case anybody wants to see them.

All right, thank you, sir. Cross examine.

They are part of the exhibit, I suppose. I will put them on top of the trunk.

Cross examination by Mr. Tyne:

Q. You say you started to look for these papers about a week before the trial started?

Mr. Van Riper: That's not what he said, if the (1353) Court please; he said he found them about a week before.

Q. Well when did you start to look for them? A. You mean pertaining to this one instance?

The Court: No, when did you start to look for anything in the trunk, any papers?

The Witness: I don't have any idea when previously my father started. This was the first—

The Court: No, you, you.

The Witness: Just about a week before the beginning of this trial, I believe it was a Tuesday; I am not quite sure; that's when I started to look in the trunk with my wife and my father-in-law.

Q. Do you remember the date? A. Yes, sir. I say it was a week before. I assume it was the 3rd of October.

Q. The 3rd of October? A. It might have been the 2nd; it might have been the 4th, I am not sure.

Q. Did you only look through the trunk on one occasion? A. Myself.

Q. Yes. A. Yes, sir.

Q. And it was on that occasion you came up with them, came up with the papers? A. Yes, sir.

(1354) Q. And you only had to go through the trunk once before you found the papers? A. I only had to, yes, sir.

Q. Did your father-in-law tell you he had gone through that trunk six times and couldn't find those papers? A. Yes, he did.

Q. He did. And when you came up with the papers you handed them to your father-in-law? A. Yes, sir.

Q. And said, "These are the papers you are looking for?" A. No, sir.

Q. Did you know what papers you were looking for? A. No, sir.

The Court: Well, what were you looking for?

The Witness: We were looking—may I explain it?

The Court: No, just answer the question. What were you looking for?

The Witness: I was looking for any papers at all.

The Court: Any papers at all?

The Witness: We looked through every paper in that trunk.

The Court: All right.

Q. How many papers did you handle? A. I imagine there were six or seven.

(1355) The Court: Were there other papers besides these in the trunk?

The Witness: Yes, sir.

The Court: Besides the ones in the sock?

The Witness: Yes, sir.

Q. How many papers were in the sock? A. I would say there were upwards to a hundred, odd papers.

Q. In the sock? A. No, not in the sock; in the trunk.

Q. I thought you said in the sock.

The Court: No, no; the question was in the trunk. I knew you didn't hear it.

A. I would say about four cablegrams and two 9 x 12 typewritten papers.

Q. Two 9 x 12 typewritten papers. All in this one sock? A. Yes, sir.

Q. And this was in a clothes compartment? A. Yes, sir.

Q. Of the trunk? A. Right.

Q. And was that on the side, the bottom, or where? A. It was on the bottom of the clothes compartment.

Q. The bottom of the clothes compartment? A. Yes, sir.

Q. And you say there were about one hundred papers in the (1356) trunk? A. In the shelves. There are two compartments in that trunk. There is a clothes compart-

ment, and there is a part which opens on the side, which has about six shelves.

Q. And you say there were a hundred papers in the entire trunk? A. Approximately.

Q. Did you go through every one of those hundred papers? A. No, sir. As I say, I was working on the clothes side, my wife and my father-in-law were working on the side with the shelves.

Q. You mean the three of you were down in the trunk, going through it? A. No, sir. That trunk stands up straight. You don't have to bend over.

Q. Oh. It stands up straight like this (indicating). A. Yes, sir.

Q. And you open it up, open it out? A. Yes, sir.

Q. And you look right in? A. That's right. I will open it for you, if you would like me to.

Q. Yes. Let's have it open, will you? A. (The witness steps to the trunk and opens it.)

The Court: Did you see it opened before?

(1357) Mr. Van Riper: No, sir.

The Court: Well, we will take a chance on it anyhow.

Mr. Van Riper: May we have the stipulation, if there is any money in it, if your Honor please?

Mr. Tyne: Well, you can have whatever you find in it.

The Court: Which is the clothes section in which you found the sock?

The Witness: Right here, your Honor (indicating).

Q. All right. This is the clothes compartment. A. That is right.

Q. Tell us where you found that sock. A. I found the sock right on the bottom among about five pair of shoes which I had put into socks when Mr. Rutkin, my father-in-law, moved out of the Hotel Riviera. I can explain that. I would like to. In the Navy we learned the only way to take care of your shoes is to put them into socks. It takes care of the finish that's on, and so forth.

Q. So you put those shoes down in the bottom? A. When we moved out, when we moved Jim out of the hotel, we put some shoes in this compartment here, and others here (indicating) and we threw assorted other things in the bottom. These pull out (indicating). There were several suits, ties, etc.

(1358) Q. And it was on the bottom here now—how many pairs of shoes? A. Oh, four or five.

Q. Four or five. And they were all resting on the bottom? A. Yes.

Q. And you say there were some suits up here. A. That's right.

Q. Anything else? A. Ties.

Q. Ties? Where were they? A. The hangers fit across. Ties were over the top. The ties were over the top of the wooden hangers.

Q. Yes. There were suits on this hanger, is that right? A. That's right.

Q. And what was on this hanger here (indicating)? A. It goes across. It is the same hanger. It is just one hanger that goes over both sides.

Q. Yes. Indicating the suit—

The Court: Sliding support.

Mr. Tyne: Sliding support, yes.

Q. The suits come out on this sliding support here? A. If you pull them out, they come out.

Q. How many suits were on this hanger, this sliding support here? A. Well, there was more than one suit on each hanger. I (1359) would say four or five. There was a tuxedo—

The Court: All right, four or five suits.

Q. Four or five suits. And there were some ties here, is that right? A. Yes, sir.

Q. Now what else in addition to the ties, the four or five suits, and the four or five pairs of shoes, in that trunk? A. I believe there was a very flashy pair of silk pajamas that was thrown on the bottom of this.

Q. I see. And you got down there. What did you do? just reach in here and pull this, take the sock out? A. No, as a matter of fact, I went about it very systematically. I first pulled each suit out, took each suit off, went through each pair of clothes. You couldn't go in the bottom until you had taken the suits out because the trousers hung down about this spot.

Q. Yes. But you could see the ones even though the trousers hung down, couldn't you?

The Court: No, no; don't, don't.

Q. Well, could you? A. No.

The Court: All right. You took the clothes out, then you got in the bottom and you found the sock.

A. Yes, sir.

The Court: All right, come back up here.

(1360) Q. Was there any other sock there with papers in it other than this particular one? A. No, sir.

Q. How long were you looking in this trunk before you found them? What space of time did you consume

looking into this clothes compartment of the trunk before you found that sock? A. I should say it took me about 35 minutes to go through all the pockets of the suits.

Q. Doing it systematically? A. Yes, sir.

Q. Getting down there, it took you 35 minutes? A. One way or the other.

Q. Well, about 35 minutes? A. Yes, sir.

Mr. Tyne: No further question.

Redirect examination by Mr. Van Riper:

Q. Just one question I forgot to ask you. What do you do? What is your business? A. I am studying for the Bar.

Mr. Van Riper: That's all.

The Court: When you took this sock out, were the papers crumpled or rolled, or how were they?

The Witness: The papers, your Honor, were rolled in and the top of the sock was flapped over, so at first (1361) glance, I mean a quick glance, you would assume it was just another shoe in a sock, but on merely touching it or looking at it more closely, you could see it didn't have the bulk of the shoe.

The Court: Just as soon as you picked it up you knew there were papers?

The Witness: Yes, sir.

The Court: And if anybody reached in the toe they would know it wasn't a shoe.

The Witness: Well, if they were looking for something in particular—

The Court: No, if they picked it up they would know it wasn't a shoe because it didn't have the weight.

The Witness: Yes, sir.

The Court: And you say they were rolled?

The Witness: Yes, sir.

The Court: And put in the sock and the sock folded over?

The Witness: Rolled into the toe and the sock was folded over.

The Court: All right.

Mr. Tyne: Did I understand you to say it had the bulk of a shoe as if it had a shoe in it?

The Witness: No, sir, I said it didn't have the bulk of a shoe.

(1362) Mr. Tyne: Yes.

The Court: All right.

(Witness excused)

Mr. Van Riper: Mr. Cezer.

FREDERICK CEZER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Van Riper:

Q. Mr. Cezer, where do you live, please? A. Millburn, New Jersey.

Q. And your profession is what? A. Certified public accountant.

Q. And you are practicing in Newark? A. Yes, sir.

Q. Located where, sir? A. Raymond Commerce Building.

Q. Mr. Cezer, I show you Exhibit D-9 in evidence and ask you if you have seen a photostatic copy of that. A. Yes, I have.

Q. I also show you D-11 in evidence and ask you if you have seen a copy of that. A. I have.

Q. Not photostatic, but just a copy of it. Now, did you take the figures—will you refer to Exhibit D-9, please, first? Did you take those figures and analyze them as to (1363) how much represented cash and how much represented percentage in the 469 and so forth? A. I did.

Q. And as a result of that have you prepared this sheet? A. Yes, sir.

Mr. Van Riper: May I have it marked for identification, please?

The Clerk: Marked D-14 for identification.

Q. Mr. Cezer, referring to this sheet, what do the figures in green ink show? A. The figures in green ink represent the figures as they appear in Exhibit D-9.

Q. Representing what, on D-9? A. They show various names and various amounts and then in the left-hand corner, upper left-hand corner, there is a recapitulation, which also has various initials and designations.

Q. All right.

Mr. Van Riper: Thank you very much. The Marshal has been kind enough to provide this easel.

Q. Mr. Cezer, I call your attention to these figures in blank ink in the far right-hand columns. What do those figures represent?

The Court: Here is a pointer for you, Judge.

Mr. Van Riper: Thank you.

(1364) Mr. Tyne: If your Honor please, I realize this exhibit is in evidence. I can't see what the purpose of this is and I would like to ask counsel what the purpose of it is.

Mr. Van Riper: Yes, sir. If your Honor please, this is simply for the clarification of the jury. It is just the use of the figures on there, no other figures except those which are on the sheet, which are already in evidence, and it just shows what the aggregate amount of cash amounts to, what percentage it is of the whole, and so forth, purely for the jury's clarification.

Mr. Tyne: Well, is he qualifying this man as an expert on the calculations or computations?

The Court: Well, I don't know. I don't know what he is doing.

Mr. Van Riper: He is an expert, if it is necessary, but it isn't necessary, sir. It is a simple matter of mathematics.

The Court: Well, if that is so, let the jury do it.

Mr. Van Riper: Yes; but, if your Honor please—

The Court: No, unless he is an expert, I am not going to permit anybody to testify here just haphazardly.

Mr. Van Riper: No.

(1365) The Court: If he is called as an expert, let him be qualified as an expert, and tell us the purpose of the testimony he is going to give; but I am not going just let an amateur mathematician come in here and give testimony, without justification.

Mr. Van Riper: I should be glad to qualify him, sir.

(1366) Q. What is your profession? A. I am a certified public accountant.

Q. How long have you been practicting your profession? A. Twenty-two years.

Q. And what is your educational background? A. I am a graduate with a degree of Bachelor of Science. I hold a license to practice in New York and New Jersey. I have lectured in accounting and allied subjects in Rutgers University. I have lectured before the American Institute of Savings & Loan Institutes on Savings & Loans accounting. I am an author and contributing author in three text books and author of various articles.

Q. And in the practice of your profession what kind of work have you done for twenty-two years, Mr. Cezer? A. All types of public accounting.

Q. Now then I ask you, sir, referring to—

Mr. Tyne: May we have the purpose stated now?

The Court: Yes.

Mr. Van Riper: The purpose, sir, is for the purpose of clarifying for the Jury the various items on Exhibit D-9 and for the purpose of showing what the total of cash items on D-9 indicate and for the purpose of showing the percentages that apply as to the whole. It can be done in about five or six questions.

(1367) The Court: All right, proceed.

Q. I call your attention to the column of black figures at the far right of the exhibit and ask you how that column of black figures is made up. A. They are the figures which are designated in D-9 as cash. They appear there as cash items.

The Court: Wait a minute, now.

The Witness: All of these figures.

The Court: They are not designated as special cash items. They are figures which are set opposite the names and after the name is the word cash.

The Witness: That is correct, your Honor.

Mr. Van Riper: Is your Honor finished?

The Court: Yes.

Q. And this column to the right which we have just been talking about contains the total amounts which are on Exhibit D-9 opposite the word cash? A. That is correct.

Q. And that total amount aggregates how much? A. $265,328.27.

Q. Now then, do you find the figure $265,328.30, that same figure again on Exhibit D-9? A. That's right. There is a corresponding—

Q. And where do you find that figure (1368) $265,328.30 on Exhibit D-9. A. The aggregate of the three figures marked a, JD and ML also equal $265,328.30.

Q. I am sorry, Mr. Cezer, you are anticipating me by one question. My question is you have just testified that the figures in the black column aggregate $265,328.27. Now I ask you if that figure is found again on D-9. A. Yes.

Q. In the right hand column? A. Yes.

Q. And it is found again opposite what designation? A. JR.

The Court: Now wait. There are a couple of JR's on here, the amount in the upper left hand corner of the exhibit.

The Witness: Yes, and in this chart it is in the upper right hand corner.

Mr. Van Riper: I think if your Honor please there is one JR and one Jim R.

The Court: No, there are two JR's, three, four JR's.

Mr. Van Riper: That is used three or four times. That's right.

(1369) Q. Now then, do I understand from what you have just told us, Mr. Cezer, that the figure $265,328.30

opposite JR are in the upper left hand corner of the exhibit, the upper right hand corner there, includes the figure of $31,839.39 marked cash under the designation Jim $? A. That's right.

Q. Now then, do the figures of $217,569.20 opposite A on the exhibit plus the figures of $39,799.25 opposite JD and the figure $7,959.85 opposite ML aggregate $265,328.30? A. That's right.

Q. In other words those figures are exactly equal to the figures opposite JR? A. Correct.

The Court: Well, the $7,959.85 is opposite ML, isn't it?

The Witness: That's right.

The Court: And it is also opposite Coste, isn't it?

The Witness: Those are not the same items.

The Court: I know, but you are simply giving figures. Let's get it straightened out. The same exact amount is opposite Coste's name also, isn't it?

The Witness: That's correct.

Q. Now then, Mr. Cezer, one more question, please. (1370) The first column in black ink—we just talked about the far column. The first column in black ink you have aggregating $234,671.73, is that a correct tabulation? A. That is correct.

Q. And what have you tabulated there to arrive at that figure? A. Well, in this exhibit there are various items marked 4%, totaling $469,343.40; 6% et cetera, and those items aggregate a total of $234,671.73.

The Court: Now wait a minute. How much is that?

The Witness: $234,671.73.

The Court: And the other figure was how much, $265,—

The Witness: —328.27.

Q. Now then, have you taken $234,671.73 and determined what percentage that is of the figure opposite the word "orig" $469,343.40. A. Yes, sir, that equals 50% of the amount designated on this exhibit "orig" at $469,349.40.

Q. And just one more column, the first column in green ink aggregating $500,000. A. Yes.

Q. What does that represent? (1371) A. Well, they appear in Exhibit D-9 just as they are there in the green ink.

Q. This is merely a copy of what is on Exhibit D-9? A. That's right. All the green figures are copies.

Q. Just as they are on there, is that right? A. That's right.

Q. The black percentages, however, were not on the Exhibit D-9?

The Court: Well, that 500,000 includes this $265,326.30 you spoke of before, doesn't it?

The Witness: That's right.

The Court: And it includes the percentages of the $469,000 you spoke of?

The Witness: That is correct.

Q. That is all as far as that exhibit is concerned, Mr. Cezer, please. Now, will you direct your attention to the other Exhibit D-11 and I call your attention to this sheet and ask you if you prepared this from Exhibit D-11. A. That is correct.

Q. Now then, I call your attention to the figures in black ink in the right hand column of Exhibit, your card here, taken from Exhibit D-9 and ask you what these figures are

in black ink. (1372) A. The figures in black and also in red are broken down on the basis of in one case a hundred thousand dollar investment and in another case under the assumption of a hundred and sixty thousand dollars investment.

The Court: There is nothing on D-11 that mentions $165,000.

Mr. Van Riper: No, sir, if your Honor please, there isn't anything on D-11.

The Court: All right. Well, he is going to confine himself to D-11 now. We are not going to have any of this speculation.

Mr. Van Riper: Well the testimony is—

The Court: He may examine D-11 and give us his analysis of that without any speculation from outside.

Mr. Van Riper: If your Honor please, the testimony is from Rutkin that in addition to the figures that appear on D-11 he was entitled to a $60,000 investment back and to the profit on his $60,000 investment and I simply want to take D-11 and add it to the $60,000 plus the profit on the $60,000 investment, plus the taxes which Rutkin said were allowed.

(1373) The Court: I still don't see what you are aiming at.

Mr. Van Riper: This, if your Honor please—

The Court: In other words, you are attacking—

Mr. Van Riper: No, sir.

The Court: Well, this says an investment of $100,000.

Mr. Van Riper: That's right.

Q. And you introduced it, yourself.

Mr. Van Riper: Yes, sir.

The Court: Now, are you trying to vary this and make it $185,000?

Mr. Van Riper: No, Rutkin testified that that was the sheet that Reinfeld gave him and that he complained about it, and he said that, "In addition to this I have 60,000 invested, besides this 100,000."

The Court: All right. Then you want to show now, what?

Mr. Van Riper: What would have been coming to him on these figures if he got what he says he had invested.

The Court: Another 60,000?

Mr. Van Riper: Yes, sir, that's all.

The Court: All right, go ahead.

(1374) Mr. Van Riper: Yes.

Q. Now, then, Mr. Cezer, you have in red ink the figures—no, in black ink, you have $164,559.10. A. That's right.

Q. Now, where did you get that from? A. Well, that's the amount that's designated "Profit on 100,000 investment." That appears in Exhibit D-11.

Q. Now, then, you have carried that—

The Court: "Amount of cash coming," what does that mean? What does that mean, "Cash coming"?

The Witness: The cash coming represents the amount of investment, as I have been given to understand.

The Court: Well, it says here the investment was $100,000.

The Witness: I might explain—

Mr. Van Riper: Of course, if your Honor please—

The Court: I know, but if he has something in his mind that he was told, as he suggests now, it just doesn't fit in.

Mr. Van Riper: Now, if your Honor please, the testimony from Rutkin is that Reinfeld told him that out of that $100,000 there is 25 had to be taken off expenses.

The Court: He may testify independently; I don't (1375) want these two things confused.

Mr. Van Riper: The witness, of course, has no information as to the 75,000 except as he took it.

The Court: He told me he got some information.

Mr. Van Riper: It is hearsay.

The Court: Go ahead. Let's see, on the basis of a profit of a hundred thousand dollar investment, the profit is supposed to be $164,359.10, and of your own knowledge, and from this sheet, you don't know what the cash coming means, do you?

The Witness: No, sir.

The Court: All right. That is my question. You don't know what it means from this sheet.

The Witness: No, sir.

The Court: All right. Now, then, have you figured out what the profit would be on a $160,000 investment?

The Witness: In the last column, as it appears on the chart it would be $263,294.56 on a pro rata basis.

The Court: Yes.

Mr. Van Riper: Beg pardon, give me that figure again?

The Witness: It is the last column, $263,294.56.

(1376) Q. I see. Yes. All right. Now, then, that's what it would be on a $160,000 investment on the same

basis, as the profit shows on D-11 for $100,000 investment, is that right? A. That's right.

Q. Now, then, what does this figure $160,000 represent here, just under the 263? A. Well, that would be $160,000 investment.

Q. That would be investment. Then you have added the investment and the profit and you come to the figure of 423,294.56, is that correct? A. That's right. That would be total proceeds, using the terminology in Exhibit D-11 at this time, total profit and cash coming.

Q. Then you have here, in the same column, opposite the word "Expenses on settlement on business," $5,280; where did you get that from? A. That is 160 times 1/100ths of 3300. In other words, it is a pro rata share of expenses.

The Court: Well, would it necessarily follow that the expenses would be that?

The Witness: No, it wouldn't.

The Court: Well, why do you use it?

The Witness: I had to use—

(1377) The Court: You are assuming?

The Witness: Assuming.

The Court: For which you have no basis at all?

The Witness: Absolutely.

The Court: Absolutely no basis.

Mr. Van Riper: Well, if the—

The Court: Wait a minute, the witness is testifying and not you.

Mr. Van Riper: All right.

The Court And he is answering my question.

Mr. Van Riper: All right.

The Court: That is the fact, isn't it?

The Witness: That is the fact, your Honor.

The Court: All right.

By Mr. Van Riper:

Q. Now, then, you have here "Advances," does that mean that you have taken the same figures that appear on the Exhibit D-9, or D-11? A. That is correct.

Q. And you have deducted them from the previous total that was just arrived at? A. That is correct. They total 55,000 in the first group.

Q. Yes. Now, then you have a—

(1378) The Court: How much? Wait a minute. How much?

Mr. Van Riper: I beg your pardon?

The Court: And 70,000 in the second group.

Q. Making a total of 125? A. 125.

Q. I see that you have a deduction. Now, then, you have a line at the bottom here, "Remaining after deducting late advances," in green ink, you have $81,259.10. Now, you took that from the exhibit D-11, did you not? A. Yes, sir.

Q. Then next to that you have 136,259.10. What does that mean? A. That's the amount that would result if there were eliminated from the figure in D-11 the $30,000 taxes that appears there as a deduction.

Q. Then in the right hand column you have the figure $293,014.56. A. That is correct.

Q. What does that mean? A. That is the amount that would result from $150,000 investment without any deduction for what appears in D-11 as taxes.

The Court: What is that figure, 293 fourteen?

(1379) Mr. Van Riper: No, 293,014.56.

Q. Now, you have a line in red ink entitled "Deduct debt due," balance of 25,000, and you have, apparently,

taken 25,000 away from the 293 figure, is that correct? A. That is correct.

Q. And that gives you a balance of how much? A. In the last column it amounts to $268,014.56.

Q. Now, does the sum total of this testimony mean that you have taken the exhibit D-11, and taken the figure of 81,000, in round figures now I am using, $81,259.10, to be exact, and added to that the 30,000 for taxes? A. That is correct.

Q. And added to that $60,000 investment, and added to that the profit on the 60,000 investment and deducted from it 25,000 as "Claim debt," and arrived at a total of $268,014.56. A. That is correct.

Mr. Van Riper: Cross examine.

The Court: When did you first get these figures for computation?

The Witness: Last week, your Honor.

The Court? When?

The Witness: Last Thursday night.

(1380) *Cross examination by Mr. Tyne:*

Q. When you got these figures, you relied on the figures as given to you, is that right? A. Absolutely.

Q. And were you in court when the defendant James Rutkin was testifying to the figures which he claimed as deductions and others which he claimed as credits? A. No, this is my first appearance in court.

Q. It is your first appearance? A. That's right.

The Court: In this court. You have testified before in other cases.

The Witness: Oh, yes, but not in this court.

Q. So—

Frederick Cezer—for Defendant—Cross

The Court: I mean I don't want you to appear a tyro as a witness.

Q. So these figures are false and unfounded, your results?

The Court: No, he takes the figures and he has given his mathematical calculations of figures given to him.

Q. Yes. You have taken the figures on the basis of two papers handed to you, one, D-9 and one, D-11. A. That's right.

Q. And what you were told. (1381) A. Yes, sir.

Q. And you don't know anything about the authenticity or the reliability of the figures here? A. I don't.

The Court: He has said what he did.

Q. Isn't it a fact that this figure here on D-9, this figuring mentions $7,959.85 set forth at least three times?

Mr. Van Riper: Which figure?

Mr. Tyne: $7,959.85.

Mr. Van Riper: All right.

Q. It is set forth over on the right, and it is also set forth again in the center of the page? A. That's right; there are various names or designations that apparently have the same amounts.

Q. Yes. In the course of your discussions was the name of Rutkin mentioned? A. I believe it was.

Q. Yes. And in your discussions with whomever you talked about leading up to the preparation of these figures here, your attention was directed to "Jim R," isn't that right? A. That's right.

Q. Specifically and particularly, isn't that so? A. That's right.

Colloquy of Court and Counsel

(1382) Q. And you have heard "Jim R" referred to as Rutkin? A. That's correct.

Mr. Tyne: No further questions.

The Court: All right, we will recess now for five minutes.

Mr. Van Riper: Thank you, Mr. Cezer.

I can finish, I am closed.

Mr. Cohen: Just a minute.

Mr. Van Riper: Excuse me, maybe I can't.

They say there is a possibility of another witness here; I thought he wasn't coming. I was going to close.

The Court: All right, we will recess for five minutes. The Jury can be excused first.

Mr. Van Riper: Can these be marked as one exhibit?

The Court: Yes.

Mr. Tyne: Is your Honor going to permit those to go in?

The Court: Yes.

(Whereupon a short recess was taken.)

Mr. Van Riper: If your Honor please, the defendant rests.

Mr. Tyne: We have some rebuttal testimony, if (1383) your Honor please.

The Clerk: May I have a chance to mark the two exhibits as Defendant's Exhibit 14 in evidence?

(Two charts, one previously marked D-14 for identification, received in evidence.)

Mr. Tyne: Mr. Reinfeld, will you take the stand, please?

Joseph Reinfeld—for Government—Rebuttal—Direct

JOSEPH REINFELD, recalled as a witness in rebuttal, having been previously duly sworn, testified as follows:

Mr. Van Riper: The Clerk's remark just reminded me of an oversight. I want to offer in evidence the witness Reinfeld's application for a revolver permit which he testified to.

Mr. Tyne: I think that is immaterial, sir, he identified it as his signature and the address that appears on there is that of his brother-in-law.

The Court: I will allow it.

The Clerk: Mark D-7 in evidence.

(Exhibit D-7 previously marked for identification, received in evidence.)

Mr. Van Riper: Thank you, sir. I am sorry for the oversight.

Mr. Tyne: That is all right.

(1384) *Direct examination by Mr. Tyne:*

Q. Mr. Reinfeld, I show you D-9 in evidence and ask you whether or not you have seen that paper before. A. I did not.

Q. You did not? A. No, sir.

Q. And in referring to this particular paper, I think I showed you a copy of it—

The Court: Speak up, will you please, Mr. Tyne, because if you speak down he is going to copy you.

Q. I think I showed you a photostat copy of that in my office here the other day, did I not? A. Yes, sir.

Q. And I asked you to look at the figures, didn't I?

The Court: Will you speak up, because Mr. Van Riper is having difficulty hearing you.

Mr. Van Riper: Thank you, sir.

Q. I ask you to look at the figures on there, did I not? A. Yes, sir.

Q. Did you ever issue any paper like that to anybody? A. I did not, sir.

Q. What was the original capitalization of Browne Vintners? A. We started at $250,000.

(1385) Q. When? A. Some time in the fall of '33.

Q. Now, I show you D-11 in evidence; did you ever see that paper before? A. No, sir.

Q. Did you ever hand this paper, D-11, to the defendant in this case? A. No, sir.

Q. Did you ever have a conversation with him about this paper, D-11, in evidence? A. No, sir.

Q. Did you ever discuss any of the figures that appear on this paper with the defendant in this case? A. I never did and I don't know what they mean.

Q. You never did and you don't know what they mean? A. No, sir.

Q. Did you ever have this paper in your possession? A. No, sir.

Q. Referring to D-11 in evidence? A. No, sir.

The Court: Did you ever instruct anyone to make up a paper of that nature and give it to Rutkin?

The Witness: No, sir.

Q. Mr. Reinfeld, it was testified to by Mr. Rutkin that (1386) you entered into an agreement with him to participate 50-50 in what has been described as a rubber hose operation at Deal, New Jersey; did you ever enter into any such agreement as that? A. No, sir.

Q. When was the first time you heard about this operation that has been described here as the hose and tank operation at Deal? A. Yesterday.

Q. In court here? A. Yes, sir.

Q. When the defendant was testifying? A. Yes, sir.

Q. Mr. Rutkin testified that prior to the—just prior to the time that he went into the Dempsey-Vanderbilt venture that he had a conversation with you, and as a result of that conversation you gave him $120,000 in cash. A. No, sir, never gave him $120,000 in cash.

Q. You never did? A. No, sir.

The Court: Did you give anybody $120,000 in cash to give to him?

The Witness: No, sir.

Q. But you did, at the time we are now speaking of, give (1387) him $60,000, did you not? A. Yes, sir.

Q. For which you received this assignment which is in evidence, is that right? A. Yes, sir.

Q. Did you have any interest in the Dempsey-Vanderbilt? A. No, sir.

Q. Did you send Sam Cohen, the accountant, down to the Dempsey-Vanderbilt Hotel in Miami, Florida to act as the accountant for that hotel? A. No, sir.

(1388) Q. Mr. Rutkin testified that you gave him $120,000 for the Dempsey-Vanderbilt venture, $60,000 of which was your money and $60,000 was a loan to him. Did you do that? A. No, sir.

Q. Sometime in 1938 when this Dempsey-Vanderbilt venture was over, according to Mr. Rutkin, did you receive back from him approximately $40,000? A. No, sir.

Q. As a payment on this loan you testified to of $60,000 that he said he got from you. A. I did not.

Q. Did you receive any money from him, Mr. Reinfeld? A. No, sir, never received any money.

Q. Now going back to D-11 in evidence, did you make an advance on May 20, 1940 to Mr. Rutkin in the amount of $5,000 May 11, 1940? A. No, sir, I don't remember anything like that.

Joseph Reinfeld—for Government—Rebuttal—Direct

Q. Again referring to D-11 in evidence, to Mr. Rutkin on February 10, 1941 in the amount of $36,000. A. I didn't get the date.

Q. On February 10, 1941 did you make an advance to Mr. Rutkin in the amount of $36,000? A. No, sir.

Q. Now, on October 24, 1941 did you make an advance of $10,000 to Mr. Rutkin? (1389) A. In '41—sometimes I don't remember exactly—I gave him twice $5,000 each time.

Q. For what purpose was that? A. That was when he told me he was going to buy a license in the Roseville Section to open a restaurant and cafe.

Q. That was what you testified to on direct examination, is that right? A. That's right.

Q. Now on June 4, 1942 did you make an advance to him of $2,000? A. No, sir.

Q. On June 15, 1942 did you make an advance to the defendant of $2,000? A. No, sir.

Q. Then referring to D-11, did you make a late advance on November 20, 1942 of $35,000 to the defendant? A. No, sir.

Q. Did you make a late advance on November 25, 1942 of $15,000 to the defendant? A. No, sir.

Q. Did you make a late advance on December 4, 1942 of $20,000 to the defendant? A. No, sir.

Q. Did the defendant Rutkin ever have any interest in the St. Pierre Miquelon enterprise (1390) that you were interested in? A. No, sir.

Q. Did you ever tell him that he did? A. No, sir.

Q. Did the defendant ever have $100,000 interest in Browne Vintner? A. No, sir.

Q. Did you ever tell him that even though he had $100,000 coming you would return him $75,000? A. No, sir.

Q. Did you ever take any deduction for taxes in the amount of $30,000 on this investment of $100,000 as stated on this D-11 in evidence? A. No, sir.

Q. It has been testified to, Mr. Reinfeld, by Mr. Rutkin that you issued stock to yourself without authorization. Did you ever do that? A. No, sir.

Q. When you were connected with Browne Vintners. A. No, sir.

Q. Was all stock that was issued based on a matter of record? A. All stock, yes, sir, for me, all on record.

Q. And all stock accounted for? A. Yes, sir.

(1391) Q. Whether it be in the name of nominees or beneficial owners? A. Yes, sir.

Q. Prior to the meeting in Mr. Kessler's office did you make mention of the sum of $250,000 to anyone? A. I didn't get that.

Q. Prior to the meeting—you were here when Mr. Mehler was testifying, the lawyer? A. Yes.

Q. And he was one of your lawyers, was he not? A. Yes.

Q. And Mr. Pearse? A. Yes.

Q. And Mr. Popik? A. Yes.

Q. Now, prior to the meeting in Mr. Kessler's office, and after the meeting in Mr. Holtz' house, did you make mention of the $250,000 to any of your lawyers? A. When I mentioned it to Mr. Mehler,—Mr. Popik was the first one I mentioned it to, and I believe once or twice we talked about it in front of Mr. Mehler.

Q. And then followed the meeting by Mr. Mahler and the other lawyers in Mr. Kessler's office, is that right? A. Yes.

Q. Was that the time that Mr. Popik told you to go to the (1392) Prosecutor?

Mr. Van Riper: Now, your Honor please, that question is—

The Court: No, I will not allow it.

Mr. Tyne: No further questions.

Cross examination by Mr. Van Riper:

Q. Mr. Reinfeld, did I understand the purport of the answer that you just gave Mr. Tyne to be that you did not mention the $250,000 to Mr. Pearse? A. I believe Mr. Pearse heard me, but I am not sure.

Q. You mean you don't say that you did not. A. Well, I told Mr. Popik—

Q. No, no.

The Court: He says he believed Mr. Pearse heard it too.

Q. Now you were asked about issuing some stock. You were asked if you ever issued stock without anyone else knowing about it. A. Yes, yes.

Q. You said you had not? A. That's right.

Q. But there was new stock issued to you from time to time? A. Issued to everybody.

Q. And to you from time to time? A. Everybody in the same time. All stockholders got their (1393) stock at the same time.

Q. Now, was Mr. Newman fronting some stock for you? A. Well, it wasn't for me, no, sir.

Q. Who was that for? A. That was for the other parties.

Q. What parties? A. Well, we have $700,000 in front money.

The Court: Well, who were they?

The Witness: That belonged to, I would say, Zwillman, Stacher, Kanengiser, Facher, Lentz, some of my brothers.

Q. Did you get in the neighborhood of $200,000 in cash from Mr. Newman for stock which he was fronting? A. Well; I wouldn't say I got $200,000.

Q. How much did you get? A. Whatever money he gave me.

Q. How much was it? A. Might have been a hundred, might have been a hundred and fifty.

Q. Well, did your son-in-law get some at the same time which together with yours brought it up to about $200,000? A. I wouldn't say my son-in-law. I believe it was Mr. Cohen and Mr. Cohen wasn't in. Whoever fronted money left it with me. When Mr. Cohen came in he kept the figure and paid it out.

(1394) Q. You say you got $100,000 or $150,000 from Mr. Newman? A. Yes.

Q. What did you do with that? A. I kept it until Mr. Cohen needed it to pay out the people who were stockholders.

Q. Then you turned it over to stockholders? A. Yes, sir.

(1395) Q. Are you sure for whom that stock was being fronted, for whom Newman was fronting? A. No.

Q. You are ~~not sure~~? A. I am not, no.

Q. Now then, you said that you did not send Cohen and Goldstein down to the Miami Hotel venture? A. No, sir.

Q. Cohen was your accountant at the time, was he not?

Mr. Tyne: If the court please, —

The Court: No, let him answer.

A. He had a big company in Newark. He had lots of clients.

Q. Were you one of his clients? A. Yes, sir.

Q. Did the Browne-Vintners Company have any other accountant at that time except Cohen? A. That's right.

Q. No, did they have any other accountant at that time except Cohen? A. They did not; they did not.

Q. So that he was the sole accountant for the Browne Vintners Company? A. Yes, sir.

(1396) Q. That's right. Did you have any knowledge that he had ever done any accounting work for Rutkin, prior to the time that the Vanderbilt-Dempsey Hotel was opened? A. I couldn't say so, no, sir.

Q. You don't know of any? A. No, sir.

Q. And it was Mr. Cohen who had this paper prepared that is marked in evidence here?

Mr. Van Riper: G-3, is it?

Mr. Tyne: Yes.

Q. Mr. Cohen had that prepared, didn't he? A. I don't know about that.

Q. Well, the paper that has his signature on; you know the one we are talking about. A. I don't know what paper.

The Court: Well, you had better show it to him.

Mr. Van Riper: Yes, let's not have any question about it.

(Exhibit G-3 produced by the Clerk.)

Q. G-3 I show you; this paper. A. Yes.

Q. Was Mr. Cohen who either prepared that or had it prepared. A. He had it prepared by his brother, an attorney.

(1397) Q. Yes. And Mr. Cohen is really the man who handled what we call paper work for you, your books and

papers and stuff, wasn't he? A. Yes, for the company, and also for myself privately.

Q. And for you privately, yes.

Mr. Van Riper: I understand you do not have the New York testimony here?

Mr. Tyne: Of Mr. Reinfeld?

Mr. Van Riper: Yes.

Mr. Tyne: It is upstairs. I don't have it here.

Mr. Van Riper: Could someone bring it down? I am sorry, I don't have mine either.

Q. Now, Mr. Reinfeld, while we are waiting for that, I understand you to say that you did not know anything about this hosing operation at Deal? A. No, sir.

Q. You mean that you did not know that liquor was being brought in for your combine by means of boats that had copper lining or whatever it was? A. No, sir.

Q. You didn't know that? A. No, sir.

Q. Did you know that alcohol was being brought in for your combine in boats of that type? (1398) A. No, sir.

Q. Did you know that alcohol was being brought in for your combine in any kind of boats? A. No, sir. We only dealt in whiskey.

Q. Did you go abroad with Rutkin and buy some boats, at one time? A. No, sir.

Q. Wasn't one of the boats of your combine caught in the Passaic River, right near Newark here, loaded with alcohol? A. No, sir.

Q. It wasn't. Well, there isn't any question but what Rutkin was in the bootlegging business, is there, in your mind?

Mr. Tyne: Well, I think that is conceded.

A. Sure.

Mr. Tyne: It is a rhetorical question.

Q. And you were with him, weren't you? A. Yes, sir.

Q. Now then, referring to Exhibit D-11, the paper Mr. Tyne showed you. I think he called your attention to a payment of $2,000 alleged to have been advanced on June 15, 1942, and he asked you if you advanced $2,000 on that date, and you said no; is that right? (1399) A. That's right.

Q. Do you recall where you were on June 15, 1942? A. No, sir.

Q. Do you recall any other transactions you had on that day? A. In June when?

Q. 1942. A. No, sir.

Q. You did advance Rutkin a couple of times a couple of thousand dollars, did you not? A. In '41—in '41?

Q. No, I am asking you at any date now. You did advance him a couple of times a couple of thousand? A. I did. I don't know whether it was a couple of thousand dollars.

Mr. Tyne: I object to the word "advance." Wait a minute.

Q. All right. Did you pay over to him? A. It was loans, as far as I felt at that time, the way he asked me for it.

Q. We are not quibbling about characterizing. You did pay over to Rutkin in cash on a couple of occasions a couple thousand dollars each, did you not? A. Well, once I gave him 2500, once I gave him 3,000. (1400) In the earlier days, around from '34 on, I gave him a thousand, five hundred, two hundred, at various times.

Q. This had nothing to do with his income from the bootlegging combination. A. No, sir.

Q. Incidentally, Rutkin testified yesterday that he had an income from that of about $80,000 a year. How much of an income did you have from it? A. That was more than I had.

Q. What is that? A. That is more than I had.

Q. How much more? A. Well, I don't know just how much more but—

The Court: Well, what did you get out of it a year.

The Witness: I probably had fifty or sixty thousand a year.

The Court: Fifty or sixty thousand a year.

Q. An average all during the years? You say that was an average all during the years? A. All during the years, yes.

Q. I see. Did you report it for income tax purposes? A. Not at that time.

Q. Now Mr. Reinfeld, outside of the $250,000 that you paid (1401) in 1943, how much money did you pay over to Rutkin after the combine broke up?

Mr. Tyne: I think that has been covered on direct examination, sir.

The Court: Well, let him answer again.

A. I didn't get that question.

Q. I say, outside of the $250,000 which you paid in May 1943, how much money did you pay over to Rutkin after the combination broke up. A. Well, I paid—after the combination broke up?

Q. Yes. A. I gave him ten in '41. I gave him ten in '42.

Q. That's twenty. A. If I gave him any small money I don't remember, but I don't think I did.

Q. Well, if you did, it was what you referred to as small money; by that what do you mean, 2,000, 5,000, at a time? A. No, that I wouldn't remember.

Q. It would be less than $2,000? A. It might have been, yes.

Q. You say small money is less than 2,000? A. Yes.

Q. Now, I call your attention to your testimony in New York.

Mr. Van Riper: Page 274, Mr. Tyne.

(1402) Q. (Continuing) And ask you if you were asked these questions and gave these answers:

"Question: What was the sum total of the moneys that you say you advanced to Mr. Rutkin? Answer: I don't know. I couldn't say.

"Question: Was it 50,000? Answer: It was, yes.

"Question: Was it 100,000? Answer: It might have been, all through the years.

"Question: $200,000? Answer: It might have been, all through the years.

"Question: A half a million dollars? Answer: No, sir."

Did you testify that?

Mr. Tyne: Now, wait a minute. Counsel—

The Court: No, did he say it? Let him answer it. Did he say it?

A. I did say it but I had in mind something else.

The Court: Never mind what you had in mind at the time.

Mr. Tyne: Counsel went over this on cross examination.

The Court: I know he did.

Mr. Van Riper: All right. That's all.

Joseph Reinfeld—for Government—Rebuttal—Redirect, Recross

(1403). *Redirect examination by Mr. Tyne:*

Q. What did you have in mind when you gave that testimony? A. The $250,000 and 60,000.

Q. And 60,000? A. And there was other small moneys, as I explained.

Q. Now, counsel asked you did you pay the taxes on this money that you made during the bootlegging days.

The Court: He said no.

A. I did, sir.

Q. You did? Did you settle with the Government? A. I did, sir.

Q. And you gave what the Government demanded of you, is that right? A. Yes, whatever they assessed.

Q. All the way back— A. From '26 up.

Mr. Tyne: That's all.

Recross examination by Mr. Van Riper:

Q. Well, you settled with the Government after the Government caught up with you, didn't you?

Mr. Tyne: That's objected to if the court please.

A. I paid taxes before, too, small taxes.

Q. But you did not report this money as you made it, did (1404) you? A. No, sir.

Mr. Van Riper: That's all.

By Mr. Tyne:

Q. Nevertheless, the Government got its taxes.

The Court: All right.

A. Yes, sir.

Mr. Tyne: That's all.
The Witness: Am I through, sir?
The Court: Yes.
The Witness: Thank you.
Mr. Tyne: Captain Bailey.

FRED C. BAILEY, called and sworn as a witness on behalf of the Government, testified as follows:

Direct examination by Mr. Tyne:

Q. Mr. Bailey, you are a little hard of hearing, aren't you? A. A little hard.

Q. Yes. Can you hear me all right? A. Oh, I can hear you all right.

Q. Good. Well speak up so everybody can hear you. A. Right.

Q. What is your full name, Mr. Bailey? A. Fred C. Bailey.

(1405) Q. And where do you reside? A. At the present time, Mantoloking—I mean Bay Head, New Jersey.

Q. In what county is that? A. Ocean.

Q. And what is your business today? A. Well, two months in the summer time it is hotel, no liquor.

Q. Hotel business. All right. How old are you? A. Well, I was born the 20th of October, 1876, which makes me 74 the 25th day of this month.

Q. What is that?

The Court: 74 the 25th day of this month.

Q. All right. Were you in the Coast Guard stationed at the Shark River inlet? A. At what time?

Q. Well, in 1930. A. In 1930 I was.

Q. All right. What were the years that you were stationed down there in the Coast Guard? A. Well, as I remember it I was transferred there some time during the summer of 1924.

Q. And how long did you remain there? A. I was transferred away from there either in November (1406) or December, 1931.

Q. What was your rank in the Coast Guard during that period? A. Warrant officer.

Q. Were you commonly referred to as Warrant officer? A. Pardon me?

Q. Strike that out. Were you commonly referred to as Captain? A. Well, sometimes, yes.

Q. Did you at any time during this period you were there know that liquor was being brought in the inlet, Shark River Inlet? A. Well, I didn't know of any coming in the inlet, I knew there was a little bit coming in somewhere in my district.

Q. In your district? A. Right.

Q. Now, did you ever receive any money in connection with liquor that was brought in illegally? A. How much, you mean?

Q. Yes. Well did you receive money? A. I did receive some, not very much.

Q. How much? A. Well, a total I would say of about $900.

(1407) Q. Over what period of time? A. Three different periods.

Q. Three different periods. I think you were court martialed, weren't you? A. Court martialed?

Q. Yes. A. No, I wasn't court martialed.

Q. What happened to you? A. Well, the Coast Guard—they took me to Washington for trial.

Q. Yes. And what happened? A. Well, then they—I admitted taking some money for liquor coming in.

Q. You did, eh? Did you ever serve any time in jail? A. Never. Well, I did—for that offense I served eight months.

Q. Eight months? A. In the Naval Prison.

Q. Naval Prison? A. That's right.

Q. That's the only one, eh? A. That's the only one.

Mr. Tyne: Now, Mr. Reinfeld, will you step forward, please?

(1408) (The person addressed stepped forward.)

Q. Did you ever see this man before today? A. Never did.

Q. I think you were shown pictures of him, showing the way he looked about 20 years ago, weren't you? A. I think so.

Q. Did you ever see this man 20 years ago? A. Never did.

Q. Did this man ever give you any money? A. Never did.

Q. Did this man ever come to your house? A. My house? I haven't any house.

Q. Well, did he ever—was this man ever in your Coast Guard station? A. No.

Q. Never? A. No.

Q. Was this man ever brought over by another man by the name of Chick Callahan? A. No.

Q. Or a man by the name of Gross? A. No.

Q. Do you know a Chick Callahan? A. No.

(1409) Mr. Tyne: Is Chick Callahan in court? Is he here?

Mr. Van Riper: I don't know.
A Deputy Marshal: No, he is not here.
The Court: He doesn't seem to be.
Mr. Tyne: No further questions.

Cross examination by Mr. Van Riper:

Q. How did you get here today, Captain Bailey? A. A train brought me up.

Q. Who told you to come up? A. Who told me? Well, I couldn't tell you the man's name.

Q. Well, when did you see him? A. Pardon me?

Q. When did you see him? A. Yesterday.

Q. He came down to see you? A. That's right.

Q. Had you ever seen him before? A. Never did.

Q. He gave you a subpoena? A. No.

Q. Just told you to come here today? A. Right.

(1410) Q. Did he tell you what for? A. Well, to be questioned. I don't know just what for.

Q. Didn't he tell you what the case was? A. Well, according to the paper, the statement I think I read in the paper, in the Asbury Park Press, he made a statement that I received a lot—made an agreement for a dollar a case, for which they could come in, which was a perfect lie.

Q. What did the man say who saw you yesterday? A. Pardon me?

Q. What did the man say who saw you yesterday? Didn't he tell you what the case was about? A. Well, I understood this was this kind of a case, yes.

Q. Yes. Now then, as I understand it you were in charge of this Coast Guard station, were you not? A. I was, at different times.

Q. Yes. And although you had the rank of warrant officer you were referred to as Captain because you were

the boss, you were in charge, is that right? A. Well, I don't know what you would call it—

Q. Well, you were in charge, weren't you? A. Pardon me?

Q. You were in charge? A. Not at all times, no.

(1411) Q. Well, at some times you were in charge? A. Some times, yes.

The Court: And you were some times referred to as Captain Bailey.

The Witness: Oh, I was sometimes, yes.

Q. Now then, do I understand you to say that while you were wearing the uniform of the United States Coast Guard and while you were in charge at times of the Coast Guard, you accepted a bribe from bootleggers to allow liquor to come in? A. I did.

Mr. Van Riper: That's all.

The Court: He said he took $900 over the period he was there, and he was tried for it and served time in the Naval Prison.

The Witness: That's right. I paid that penalty long ago.

The Court: All right, step down, sir.

The Witness: Thank you. That was the penalty the Coast Guard give me.

The Court: Yes.

Mr. Tyne: Now, if your Honor please, for the purpose of the record, and I have discussed this matter with Mr. Van Riper, I have the stenographer here who took (1412) the testimony before Judge Bromberger who was sitting as a Commissioner of Investigations in New York. If there is any question about whether or not Rutkin was testifying

under oath—I think I would like to eliminate any question—I would like to call her.

The Court: All right.

Mr. Tyne: Will you take the stand, please?

LILLIAN M. GROVE, called and sworn on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Tyne:

Q. Where do you live, please? A. 174 Chestnut Street, Brooklyn, New York.

Q. And what is your occupation or position today? A. I am a reporting stenographer for the Department of Investigation of the City of New York.

Q. And were you such in March 1945? A. I was.

Q. Now, you were subpoenaed to come here, were you not? A. I was.

Q. And I asked you to bring your original notes and I have discussed this matter with you, have I not? A. Yes, sir.

Q. The matter I referred to is the testimony given by James Rutkin before Judge Bromberger? (1413) A. Yes, sir.

Q. On March 8, 1945? A. Yes, sir.

Q. And did you report that testimony? A. I did.

Q. Will you tell us whether or not the defendant Rutkin was sworn before he gave the testimony? A. At 9:50 a. m. on March 8, 1945 he was sworn by Judge Edgar Bromberger.

Q. And then proceeded to give the testimony on that day, is that right? A. Yes, sir.

Mr. Tyne: That's all.

Lillian M. Grove—for Government—Rebuttal—Cross

Cross examination by Mr. Van Riper:

Q. Miss Grove, what court was Judge Bromberger holding that day? A. He wasn't in any court. He was acting as Commissioner of Investigation of the City of New York.

Q. He was not sitting as a Judge? A. No, sir.

Q. And where did this proceeding take place? A. In Judge Bromberger's chambers.

Q. Were they the Judge's chambers or— A. No, his office.

(1414) Q. The Commissioner's Office, was it not? A. That's right.

Q. And was that a one room affair? A. Well, it is one room, with rooms adjacent.

Q. Yes. And the room in which Mr. Bromberger was, how was that furnished? Was there a bench, like a Judge's Bench?

The Court: I don't think it makes a particle of difference.

Mr. Van Riper: No, it doesn't, if your Honor please, but—

The Court: No, the testimony is that he was sworn and sworn by competent authority.

Mr. Van Riper: Yes, sir. I am not attacking the fact that he was sworn.

The Court: I won't allow anything further. That's all we need.

Mr. Van Riper: I simply wanted to show the atmosphere.

The Court: That's all she was produced for.

Mr. Tyne: That's all. Thank you very much.

(The court interrogated the witness aside.)

Colloquy of Court and Counsel

The Court: I just elicited the information off the record that Judge Bromberger was married and was (1415) down in Florida.

Mr. Van Riper: Married, and he is also retired. I don't know that they are synonymous, but I understand he is retired.

Mr. District Attorney, I forgot to ask Mr. Reinfeld when he was on the stand if he had produced the affidavit I asked him to produce.

Mr. Tyne: I have it, yes.

Mr. Van Riper: Do you want to produce it?

Mr. Tyne: I will. I have a copy of it.

Mr. Van Riper: I don't want to hold up the proceedings. May I look at it while you go ahead?

(Discussion between the court and counsel at the bench off the record.)

Mr. Tyne: If your Honor please, when the defendant was on the stand testifying to three houses down in Deal I requested him to furnish me with certain information relating to those houses; that is, the address and location.

The Court: Yes.

Mr. Tyne: He said he would have the information by last night or by this morning. I call upon the defendant and his counsel to produce the information.

Mr. Van Riper: If your Honor please, the (1416) defendant stands by the statement that he made yesterday except that he was not able to get the information last night because he was not in condition to go to Deal. He says he can produce the information only by going to Deal and locating the house. He can do it if he goes there.

The Court: All right. We will recess until two o'clock. The Jury will be excused first.

(Noon recess.)

* * * *

AFTERNOON SESSION

(1417) JOSEPH NEWMAN, recalled as a witness in rebuttal on behalf of the Government, having been previously duly sworn, testified as follows:

Direct examination by Mr. Tyne:

Q. Mr. Newman, you are the same Mr. Newman who was called by Mr. Van Riper? A. Yes, sir.

Q. (Continuing)—a day or so ago? Were you connected with Browne Vintners Company? A. Yes, sir, I was.

Q. During what period of time? A. From '33 until they turned over to Seagrams.

Q. I see. That was in December, 1940, is that right? A. That's correct.

(1418) Q. Now, during that period of time did you hold any office in that company? A. Well, for a period of about two years I was president.

Q. Now, what years were they, Mr. Newman? A. Oh, I think it was around 1934, if I remember rightly.

Q. '34 to '36? A. About that time.

Q. During that period of time what were your duties? A. Well, I had charge of the scotch imports, I also was credit manager, and attended conventions; and occasionally went out and called on the trade.

Q. Did you sign any checks? A. Yes, at times.

Joseph Newman—for Government—Recalled—Rebuttal—Direct

(1419) Q. Now during the period that you were at Browne Vintners which you say was from 1933 to 1940 did you see the defendant Rutkin at the Browne Vintners' plant? A. I saw him only a couple of times, that's all.

Q. When you say a couple of times what do you mean? A. Two or three times.

Q. Two or three times and you identified the defendant who is sitting here in the court room? A. That's him.

Q. That is the individual. Now, did he occupy any office in Browne Vintners? A. No, sir.

Q. Did he have any office,—

The Court: Office space.

Q. —that is office space? A. No, sir.

Q. Did he represent the company in any of its affairs of Browne Vintners? A. Never to my knowledge, never.

Q. Did he participate to your knowledge in any of the business or corporate affairs of Browne Vintners' Company? A. No, sir.

(1420) Q. Did the defendant ever attend any of the stockholders meetings? A. No, sir.

Q. Did the defendant ever attend any of the directors meetings? A. No, sir.

Q. Did you ever issue any checks of Browne Vintners to the defendant? A. Not to my knowledge, no.

Q. To the defendant as payee? A. No, sir.

Q. Did Rutkin ever participate in establishing any of the policies or programs of Browne Vintners Company? A. No, sir.

Q. Now, Mr. Newman, you know Mr. Joseph Reinfeld, do you not? A. Yes, sir, I do.

Q. Did he occupy an office? Was he an officer of Browne Vintners? A. Yes, I believe he was treasurer and he succeeded me as president.

Joseph Newman—for Government—Recalled—Rebuttal—Cross

Q. Now you continued as president up until when? A. Oh, I think until about 1938.

Q. 1938? A. I think so.

(1421) Q. And you continued with Browne Vintners thereafter? A. Yes, sir.

Q. And how long was Mr. Reinfeld president? A. I think he was until Seagrams took us over and I think that was in 1940.

Q. 1940. You said that Mr. Reinfeld was treasurer of Browne Vintners. Do you know for what period of time he was treasurer? A. No, I couldn't—I think, oh, probably from '34 up until he became president.

Q. Then do I understand your testimony to be, Mr. Newman, with respect to the defendant, that the defendant never worked for Browne Vintners or participated in the business or corporate affairs of Browne Vintners, to your knowledge? A. To my knowledge.

Q. Now, you didn't know anything about his being employed in Chicago, for a period of time? A. I did not.

Q. You did not. And you were at the New York office, is that so? A. Correct.

Mr. Tyne: Cross examine.

Cross examination by Mr. Van Riper:

Q. Mr. Newman, did I just understand you to say that you didn't know that Mr. Rutkin was working at Chicago for the (1422) company? A. I did not.

Q. And you didn't know he was getting $15,000 a year? A. I certainly did not.

Q. Well, could he have been put on the payroll at $15,000 a year without you as president of the company knowing it? A. If he was put on the payroll I had no knowledge of it.

Q. Well, could that have been done without knowing it? A. I am telling you if he was, it was done.

Q. Well, who had the authority to do that in the company while you were president? A. I don't know who would do it.

Q. Who had the authority in the company? A. I suppose Mr. Reinfeld would, if he was.

Q. Well, you suppose. Isn't it a fact that Mr. Reinfeld did? A. I don't know.

Q. No, but I mean Mr. Reinfeld did have the authority? A. Oh, yes; surely he did.

Q. And during the time you were president, Mr. Reinfeld, you told us the other day, was the directing head of the company, wasn't he? A. Correct.

Q. And by that you mean he was the boss of the company? A. Well, he was one of the bosses.

(1423) Mr. Tyner: Well, of course, I object to that, if the Court please, as a conclusion.

The Court: It is a fact, in any event, that he himself testified to.

Q. You don't pretend, I assume, Mr. Newman, to tell us that you knew everything that Mr. Reinfeld did in connection with the company? A. No, I don't.

Q. No. And I assume it is also a fact that you do not pretend to tell us that you knew everybody who came in the offices and when they came in and whom they saw? A. Well, I know pretty much everybody. I would greet them, naturally; they would come in and see me, et cetera, and so forth. But there may have been some in there that I didn't see.

Q. And if someone came in to see Mr. Lentz or Mr. Davis, and Mr. Reinfeld, and didn't come to see you, there is no reason why you would know about it, is there? A. If they had no business with me, naturally, I wouldn't.

Joseph Newman—for Government—Recalled—Rebuttal—Cross

Q. No, Now, I understand you to say that Mr. Reinfeld succeeded you as president in 1938, about. A. I think that is when it was.

Q. So that from the time—

(Mr. Tyne addressed Mr. Van Riper aside.)

Mr. Van Riper: No, he succeeded him.

(1424) The Court: He succeeded him in '38. He continued until 1940. Is that right?

The Witness: Yes.

Mr. Tyne: Yes.

Q. So the fact is then that from 1934, when the company started, Mr. Reinfeld did not become president of it until 1938? A. I think that's right.

Q. Although in the meantime he was the directing head? A. Yes.

Mr. Van Riper: All right, that's all, thank you.

The Court: You may step down.

Mr. Tyne: Just one question.

By Mr. Tyne:

Q. The name of Mr. Lentz was mentioned. What was his position with Browne Vintners? A. Well, I think he was sales manager. I am not sure.

Q. And would he have charge of those matters relating to sales and the employing of salesmen?

Mr. Van Riper: If your Honor please, I object to the leading question.

The Court: I don't think it is material. I don't see the materiality.

Mr. Tyne: All right, that's all.

(Witness excused.)

(1425) Mr. Tyne: Mr. Browne.

Edward T. Browne—for Government—Rebuttal—Direct

EDWARD T. BROWNE, called and sworn as a witness on behalf of the Government, testified as follows:

Direct examination by Mr. Tyne:

Q. Your full name is E. T. Browne, is that right? A. That is correct.

Q. And you know the Browne Vintner Company, do you not? A. I do.

Q. And you are the Mr. Browne after whom the corporation was named, is that so? A. Correct.

Q. You came into the corporation with Mr. Newman, did you? A. I did.

Q. In 1933 or thereabouts? A. At the end of 1933.

Q. 1933. Were you the first president of Browne Vintners? A. I was.

Q. For what period of time, Mr. Browne? A. About four months.

Q. About four months. Do you know the defendant, Rutkin? A. I do not.

(1426) Mr. Tyne: Will you stand up, Mr. Rutkin, please?

Mr. Rutkin: Yes, sir.

Q. This man here, do you know him? A. I do not.

Q. Did you ever see that man around, the defendant around Browne Vintners during the time you were president? A. I did not.

Q. You did not? A. No.

Q. Did he ever give you any orders? A. He did not.

Q. Did you ever give him any orders? A. No, sir.

Q. Did he ever participate in the business affairs of Browne Vintners? A. I never saw the gentlemen before.

Q. You never saw the gentlemen before? A. No.

Q. So he couldn't have participated in any of the business affairs.

Mr. Van Riper: Oh, no, no.

The Court: That doesn't follow, that is a conclusion. He said he never saw him before.

Q. Never saw him before. And by that I take it you mean (1427) you never saw him Browne Vintners? A. That's right.

The Court: He said he never saw him before.

The Witness: I said I never saw him before.

Mr. Tyne: No further questions.

Cross examination by Mr. Van Riper:

Q. How did you come to be president of Browne Vintners, Mr. Browne?

The Court: I don't care about that at all. The only question is whether he was or not.

Mr. Van Riper: All right.

Q. Who brought you into Browne Vintners? A. Mr. Newman introduced certain people that came in there, and if and when Repeal became possible I would be interested in the formation of a company called Browne Vintners.

Q. You say Mr. Newman introduced certain people? A. Mr. Newman introduced the gentlemen.

The Court: Who were the gentlemen?

The Witness: Mr. Reinfeld, Mr. Lentz and Mr. Davis.

Q. And what about Mr. Seaman? A. I think he attended one meeting or two meetings.

Q. You knew Mr. Seaman, did you not? (1428) A. I did.

Q. Did you invest any money in Browne Vintners? A. I did not.

Q. How long were you president? A. About four months.

Q. And why did you resign? A. I didn't like the liquor business.

Q. Is it a fact that you were drunk because of the fact that you drank too much they asked you to get out? A. I wouldn't say that.

Q. Well, would you say it is or is not a fact? A. It is not a fact.

Q. And did you get out of your own free will and accord? A. I did.

Q. Did you own any stock? A. Yes.

Q. How much? A. 25%.

Q. And do you know how much that amounted to in shares? A. 25% of the common stock.

Q. How many shares was that, Mr. Browne? A. I couldn't tell you that offhand.

Q. Was it in your name? A. Yes.

(1429) Q. And did you pay anything for it? A. No.

Q. And did you sell it when you got out? A. We made a trust agreement.

The Court: Well, this is all very interesting to somebody, but not particularly appropriate so far as I see in the solution of the difficulty which is in this case.

Mr. Van Riper: I don't think it is, if your Honor please, and I don't think the direct testimony was, but the witness is called for the purpose of trying to show that Rutkin didn't have anything to do with Browne Vintners.

The Court: All he testified to was he never met him and never saw him, and that is the sum total of his testimony.

Mr. Van Riper: That is right.

Q. Who have you talked with about coming here today, Mr. Browne? A. Nobody except Mr. O'Donnell. I haven't seen any of these folks in ten or fifteen years, except Mr. Newman.

Mr. Van Riper: All right.

Mr. Tyne: You had a drug company?

The Court: Oh, let's not carry this thing any (1430) further.

Mr. Tyne: All right.

The Court: Step down, Mr. Browne.

The Witness: Thank you, Judge.

(Witness excused.)

Mr. Tyne: Mr. Lowell.

MORTIMER LOWELL, called and sworn in rebuttal on behalf of the Government, testified as follows:

Direct examination by Mr. Tyne:

Q. Mr. Lowell, where do you reside? A. Bayside, Long Island.

Q. And what is your business? A. Advertising.

Q. How long have you been in the advertising business? A. About 30 years.

Q. Under what name are you presently operating? A. Mortimer Lowell Company, Inc.

Q. Now, were you in the advertising business in the 30's? A. Yes.

Q. Under what name? A. Same name.

Q. And where was your place of business? A. 369 Lexington Avenue, Manhattan.

Q. Did you have any of the advertising business of Browne (1431) Vintners? A. I did.

Q. From what time? A. From the beginning of Repeal to the time that the corporation was sold to Seagram and I remained with the advertising company until I believe the end of 1944 or thereabouts.

Q. Now, during that period of time from 1933 until the end of 1944 were you at the office of Browne Vintners? A. Frequently.

Q. When you say frequently how often? A. Well, never less—rarely less than once a week and sometimes three or four times a week.

Q. And I think you said you did the advertising for Browne Vintners. Will you tell us just what that consisted of?

The Court: He did the advertising.

Q. Now, during that period of time did you ever see the defendant Rutkin there at Browne Vintners? A. Yes, I saw him there several times.

Q. When you say several how many times do you mean? A. Well, I had heard Mr. Rutkin's name mentioned. I had never met the gentleman for perhaps the first two years during which time I visited the offices of Browne (1432) Vintners. I then was introduced to him at one time I believe in the office of Mr. Reinfeld and subsequently I saw him during my visits to Browne Vintners on some occasions, not too often.

Q. During that period of time that you were in the advertising business did Rutkin ever give you any orders? A. No, sir.

Q. Any direction of any kind? A. No, sir.

Q. Did he participate in the advertising work? A. No, sir.

Q. And he never had anything to do with you in connection with the advertising business you were doing for Browne Vintners? A. Not with me.

Mr. Tyne: That is all.

Mr. Van Riper: No questions.

JOHN H. OWEN, called and sworn in rebuttal on behalf of the Government, testified as follows:

Direct examination by Mr. Tyne:

The Court: Is this another advertising man?

Mr. Tyne: No, sir.

Q. Mr. Owen, where do you reside? A. Pardon?

(1433) Q. Where do you reside? A. I live in Bronxville, New York.

Q. And what is your business? A. I am in the advertising business.

Q. How long have you been in the advertising business?

Mr. Tyne: Give me a chance, Judge.

A. About eleven years.

Q. Did you have any connection with Browne Vintners? A. Yes, sir.

Q. During what period of time? A. Well, I went with them about September 1933 just before Repeal as vice-president in charge of sales and I was made president of the company about—well, I am guessing—April or May 1934. And I resigned at the end of January 1936.

Q. And I think you went with McKesson & Robbins, did you? A. I went from there to McKesson & Robbins, yes, sir.

Q. Now, during this period of time that you were vice-president and president of Browne Vintners did you see

the defendant Rutkin at the Browne Vintners' offices? A. A few times, very few.

Q. When you say very few what do you mean? A. Four or five I imagine.

Q. Four or five? (1434) A. You mean in the offices?

Q. Yes. A. Yes, sir.

Q. Did he have anything to do with the business affairs as far as you know of Browne Vintners? A. Nothing.

Q. Did he ever participate in the formation of any of the policies of Browne Vintners? A. None at all.

Q. Did he ever do any work in the New York offices? A. None.

Q. Did he ever attend any of the stockholders' meetings? A. Not to my knowledge.

Q. Did he ever attend any of the directors' meetings? A. Not to my knowledge.

Q. Well, you were around there, weren't you?

The Court: He said not to his knowledge. Now don't go any further.

Q. Did you sign the checks? A. Yes, sir.

Q. For the corporation? A. Yes, sir.

Q. Did you ever sign any check on which the name of the defendant James Rutkin appeared as payee? (1435) A. Never.

Q. Did you ever issue or deliver any check to Rutkin? A. Never.

The Court: I don't see how this is relevant because there is no contention that he ever did get checks from them. This is rebuttal and I am going to confine you to strict rebuttal.

Q. Did you have any knowledge of the fact that Rutkin was employed in Chicago for a short period of time? A.

Not while I was there. I heard that he was after I left; I didn't know.

Q. You were in court the other day when I asked you to stand up to be identified and the witness who was on the stand at the time was Mr. Pass, is that right? A. Yes, sir.

Q. Do you know Mr. Pass? A. Yes, sir.

Q. What is his business? A. Well, I would classify him as a broker.

Q. A business broker? A. Yes.

Q. I direct your attention to the White Rock Company. Did you introduce Mr. Pass to Mr. Reinfeld in connection with the White Rock Company? (1436) A. Well, I certainly took him there when we presented it to him if he had met him before he didn't tell me so.

Q. Well, let's go back a little bit. Were you interested in White Rock before you introduced Mr. Pass to Mr. Reinfeld? A. Yes, I was. That is, I was interested in trying to purchase it and trying to get permission to purchase it for Reinfeld. I asked him would he be interested in buying it. He said he thought he was. I was interested in the advertising.

Q. And then did you go to see Mr. Pass? A. Yes, we got together and I told him that if he would call on the stockholders, see if he could get the stock for sale, he could keep the commission, I wouldn't be interested in the commission on the sale, just the advertising.

The Court: I don't care about the details of this thing. What are you trying to rebut? If you are going to rebut something, rebut it. I don't care about all these details.

Q. Did you introduce Mr. Pass to Mr. Reinfeld? A. Yes.

Q. In what year? A. Well, I am not sure. I would say the latter part (1437) of 1942, somewhere in there.

Q. And why do you fix the year of '42 as the year? A. Well, it was about, as I remember it, a year and a half after I purchased an interest in my company.

Q. And what date was that? A. It was early '41.

Mr. Tyne: No further questions.

Cross examination by Mr. Van Riper:

Q. As I understand it then, Mr. Owen, your recollection is that you introduced Mr. Pass to Mr. Reinfeld in the latter part of 1942. A. Yes.

Mr. Van Riper: That is all.

The Court: All right. Step down. All right, sir. Thank you.

Mr. Tyne: Max Fuchs. Max Fuchs, is he here, the man referred to as having control of the slush fund. May I have a word with Mr. Van Riper, sir?

* * * * *

Mr. Tyne: I might say the defense has had Mr. Fuchs under subpoena, I am not sure whether we had him under subpoena; he was supposed to be here, at any rate.

The Court: Is he here?

Mr. Tyne: May I step out in the hall and find (1438) out from the agents whether he has arrived.

The Court: Yes.

* * *

Mr. Tyne: I am informed, sir, that he has not arrived yet. Will your Honor give me ten minutes? If he doesn't show up then I won't press it.

The Court: No, he ought to be here. We will find out why he isn't here too. I don't intend to pass over any of the gentry who seem to contemn the processes of this court. Is this he coming in now?

Mr. Tyne: No.

The Court: Anything further?

Mr. Tyne: Except to offer in evidence this share of White Rock Mineral Springs Company stock.

Mr. Van Riper: No objection.

The Court: Mark it in evidence.

The Clerk: Marked G-4 in evidence.

Mr. Tyne: I would like to offer the letter too.

Mr. Van Riper: I don't think the letter is material or competent. The stock I am perfectly willing to admit because the witness testified that he bought the stock and presented it.

The Court: What is the letter?

Mr. Tyne: The letter is a letter from White (1439) Rock Mineral Springs Company from Robert William Levin—

The Court: All right, mark it.

The Clerk: This exhibit is marked Government Exhibit 5 in evidence.

(Received and marked Exhibit G-5.)

The Court: Anything further?

Mr. Tyne: I will just check on my exhibits, sir.

The Court: All right, will you check on your exhibits too, Judge Van Riper?

(1440) The Court: There was a little discussion here as to whether or not it was brought out in the evidence that both Mr. Popik, counsel for Mr. Reinfeld, and Mr. Cohen, the accountant, were dead; I think that has been brought out several times.

Mr. Tyne: There is no question about that.

The Court: I don't know if there is any question, it is now on the record anyhow.

Mr. Van Riper: I think several witnesses have testified to it. I am very glad to join.

The Court: Is there anything further?

Mr. Tyne: One minute, sir. I again call upon the defendant to produce the information relative to these houses down in Deal.

The Court: Well, counsel for the defendant has already said he cannot get it without the defendant going down to Deal, and it will rest that way, it is not here.

Is there anything further?

Mr. Tyne: Nothing further, sir.

Mr. Van Riper: No, sir.

The Court: All right, then, we will take it that both sides rest with the exception of this fact: that I want to be sure that all of the exhibits are on file with the clerk, and I will give you until before summations on (1441) Monday, if it gets that far, to check up—that and supplement the present list if the supplements are admissible.

Mr. Van Riper: Yes, sir.

The Court: All right. I imagine, gentlemen, that now, as in the ordinary course, you desire to make some certain motions.

Mr. Van Riper: Yes, sir; Mr. Simandl for the defense.

The Court: I will excuse the jury during the motions.

The jury will be excused.

(The jury withdrew.)

Motion for Judgment of Acquittal

(1442) The Court: All right, sir.

Mr. Simandl: If your Honor please, in behalf of the defendant at this time we move the Court for a judgment of acquittal upon the following enumerated grounds:

First, on the ground that the evidence produced by the government in this case is insufficient in fact and in law upon which the jury can predicate a finding of guilt beyond a reasonable doubt, and therefore the Court must direct a judgment of acquittal.

Secondly, that the greater weight of the creditable evidence is in favor of the defendant and therefore the Court must direct a judgment of acquittal.

Thirdly, the government has failed to sustain the burden it bears of proving the defendant guilty of every element of the offense for which he has been indicted beyond a reasonable doubt and therefore the Court must direct a judgment of acquittal.

Fourthly, that the government has failed in this case to present sufficient evidence from which the jury could infer beyond a reasonable doubt that Rutkin willfully committed the offenses he is charged with in the indictment and therefore the Court should direct a judgment of acquittal.

The fifth ground, that the government has failed to prove beyond a reasonable doubt that the money which (1443) the defendant, Rutkin, received from Reinfeld and failed to report in his income tax return for the year 1943 was in accordance with the law taxable income and the Court should therefore direct a verdict of acquittal. And with reference to that ground I would like to add this—

The Court: Well, before you go into any argument or any further ground—

Mr. Simandl: Yes.

The Court: I want the motion recited, first.

Mr. Simandl: Yes, sir. This is a further ground:

Either the defendant came by the money through the method as testified to by Reinfeld and as alleged by the government, or through a stockholding interest in Browne Vintners as the defendant testified. If by the latter method, the tax was paid on the money, as testified, and even if by the former method, then as a matter of law the defendant would not be required to pay a tax, and therefore a judgment of acquittal should be directed.

A further ground: We desire to renew and repeat at this point the motion made at the end of the government's case for a judgment of acquittal upon the same grounds as stated at that time by Mr. Cohen. Your Honor will find the motion on pages 487 to 497 of the record.

The Court: I remember it. I remember the motion.

(1444) Mr. Simandl: And I desire to incorporate them here as to what was said at that time, as to the reasons and arguments, for the purpose of having your Honor at this time direct a judgment of acquittal. I might say that in the record your Honor states a directed verdict, although Mr. Cohen thought—

The Court: A judgment of acquittal.

Mr. Simandl: —it should be a judgment of acquittal.

The Court: A judgment of acquittal.

Mr. Simandl: And I would like the record to state that correction.

Was your Honor about to say something when I interrupted?

The Court: Yes, I was. I was about to say I am very curious to know the theory of law upon which you think the defendant would not be supposed to pay a tax if he got it by extortion.

Mr. Simandl: If your Honor please, under the—

The Court: Don't cite the embezzlement case because that is an entirely different thing.

Motion for Judgment of Acquittal—Denied

Mr. Simandl: Well, if your Honor please, I have to cite it because of the wording in the case. Your Honor will remember the wording in the case to the effect that it uses embezzles or steals, and there has been no (1445) condonement, no release by Mr. Reinfeld in this case, and therefore it certainly comes within the purview of the argument in that case.

The Court: It comes within the purview of an argument, but it certainly does not come within the purview of the determination in that case, which case, by the way, is subject to a great deal of critical doubt; but whether subject to critical doubt or not, remains the law. But I will rule that on all of your grounds I will not direct a verdict of acquittal, and you may have an exception.

Mr. Simandl: May I just ask your Honor to do this: to reserve now the decision, as provided under Rule 29(b), for the reason that I was about to elaborate on the sufficiency of the evidence, and naturally Mr. Van Riper; when he sums up, will elaborate on it. I wondered whether your Honor would invoke Section (b) of Rule 29, which says if a motion for a judgment of acquittal is made—

The Court: I am very familiar with the motion.

Mr. Simandl: Yes.

The Court: And I am also very familiar with the evidence and I believe that it is certainly a question of fact for the jury, and I don't think that either you or Mr. Van Riper, or Mr. Cohen, your associates, can review the evidence with any greater clarity than the clarity with which I remember it, and I am convinced that (1446) there is a question of fact there which is not for the Court to determine but remains for the jury. I shall therefore now flatly and categorically deny your motion and you may have an exception.

Mr. Simandl: All right.

The Court: If there be any change in the situation, as you know, the rules provide for the opportunity for the Court to correct itself.

All right, thank you.

Mr. Simandl: Yes.

The Court: That, I think, takes care of all the preliminary matters and leaves us confronted with the situation of summations and the charge to the jury. I have discussed with counsel, in the event that we arrived at the point at which we have arrived, how long they would require for summation, and Judge Van Riper said an hour and a half, and I suggested that I would allow two hours as a limit, with the suggestion, of course, and enthusiastic suggestion, of the Court that he do confine himself to an hour and a half, and with the same enthusiastic suggestion to the United States Attorney that he confine himself to an hour and a half, but giving the half hour leeway so that you would not feel yourselves, as I at one time said, "cabin'd, cribb'd, confin'd," not having created that phrase, of course. But I think that is understood, isn't (1447) it, gentlemen?

Mr. Van Riper: Yes, sir.

The Court: And I am not making any prediction as to the time the Court will occupy in his charge.

Is there anything further you desire to discuss in the absence of the jury?

Mr. Van Riper: No, sir, so far as we are concerned.

The Court: All right. Send for the jury.

Mr. Tyne: I might say Mr. Rothwacks has prepared an additional request that I am looking over now. I would like to hand it up to your Honor.

(The jury returned to the court room.)

* * *

Colloquy of Court and Counsel

(1449) Newark, New Jersey
Monday, October 23, 1950.

(Trial resumed pursuant to adjournment.)

(Appearances as before noted.)

The Court: As I suggested last Friday, you may extend your remarks to two hours, but I wish you would keep it within an hour and a half; but with that in mind at the end of an hour and fifteen minutes I will just give a tap on the gavel so you will know that there will be fifteen minutes more for the hour and a half.

Mr. Van Riper: If your Honor please, when we closed Friday I called attention to the fact that three exhibits that had been marked for identification were not here, because the accountant walked off with them and I forgot to get them from him and your Honor very kindly said I might offer them this morning. I called Mr. Tyne's attention to the record where the witness Reinfeld was shown them. The witness said that he did not remember them but they were probably sent out. One was a letter on the stationery of Browne Vintners; the other was a letter on the stationery of Sam Cohen and the other one was just marked Browne Vintner's property. He said if the letter was sent out that he probably saw them at the time. I offer them.

Mr. Tyne: I object. I don't remember that he said or that there was really any proof that the defendant ever received them. I don't think that they are material, (1450) if the court please.

Mr. Van Riper: Simply to help the jury in showing how the distribution was made.

The Court: This number 3, marked number 3, showing—this is just a copy of the type of accounts sometimes used. Was there any testimony from anyone that it was actually received?

Mr. Tyne: No, sir.

Mr. Van Riper: Not that it was received, no, but Reinfeld said that it was probably sent out. I can give it to your Honor.

The Court: Well, that is not enough. Is there any testimony?

Mr. Van Riper: Probably it was, he said, but I don't remember.

The Court: That is not any basis for its introduction as far as that's concerned. How about the other two, one of which is—

Mr. Van Riper: D-4.

The Court: The unsigned, unaddressed carbon copy dated April 8, 1941.

Mr. Van Riper: Is that D-4, if your Honor please, on the letter head of Browne Vintners?

The Court: That is on the letter head of Browne Vintners. It is unsigned and unaddressed.

(1451) Mr. Van Riper: He said "I don't remember, but if that's what was sent to all stockholders, I must have got one."

Q. And you think it was probably sent out?

"Probably sent out but I don't know whether that's the one I received."

The Court: Well, I don't think that's sufficient identification. Did Rutkin ever testify that he received one?

Mr. Van Riper: No, sir, I don't think he did.

The Court: Oh, no, he wasn't on the list of stockholders. Now, the one Samuel Cohen—

Mr. Van Riper: That one, I said "I ask you if that refreshes your memory." He said "Well, if it's Browne Vintners, it must be right.

"Q. Well, it doesn't necessarily mean that it must be right because I handed it to you; I wanted you to make sure that it was right."

(No answer.)

"Well, does it sound generally right to you, put it that way. I don't want to confuse you." He said "No. I am a bit confused when we sold out &c."

The Court: Well, I don't see—

Mr. Van Riper: Your Honor please, there isn't anything in them that isn't in the evidence. I don't want (1452) to insist too much because it is just a matter of clarifying it for the jury, but it is in the evidence anyway.

The Court: All right.

Mr. Van Riper: May I ask the District Attorney for an opening as to the points as to which he relies for a conviction?

(Mr. Tyne opened in summation.)

(Mr. Van Riper summed up on behalf of the defendant.)

(Noon recess.)

AFTERNOON SESSION

(Mr. Tyne summed up on behalf of the Government.)

(1452) **Charge of the Court**

Ladies and gentlemen of the jury:

A Grand Jury of the United States of America in and for the District of New Jersey has returned an indictment against James Rutkin which charges him with wilful attempt to defeat and evade income tax owing to the United States of America, in violation of the statute in such case made and provided.

The indictment has been read to you several times and I think that no good purpose would be gained by a rereading of it. But let me say at the beginning that the mere fact that an indictment has been returned is not to be considered by you in any way as evidence of the guilt of the accused. It is simply the formulation of a charge in order that he may know that accusation which is made against him; and it has no probative value whatsoever.

Sometimes people think that because an indictment is returned that that is an indication of guilt. That is not so, and the old adage "Where there is smoke there must be fire" does not apply in this instance. You are not to give to the fact that an indictment was returned any weight as proof of what it contains whatsoever. I trust that is perfectly clear to you.

I have told you that the indictment charges that James Rutkin attempted to evade the income tax and to defeat (1453) the income tax which he owed to the United States of America.

The charge is very simply stated but there are certain things about it which you must keep in your minds as you consider the evidence which was brought before you, which has been brought before you. Every element of this offense must be proven to your satisfaction beyond a reasonable doubt.

In order to constitute a violation of the statute under which this indictment has been returned, there must be a wilful and positive attempt to evade a tax in some manner or to defeat it by some means. The word "wilful" is used and it might be well to consider just what is meant by wilfulness in this connection.

Wilfulness denotes that which is intentional or knowing or voluntary, as distinguished from that which is accidental. It means purposeful, obstinate; and is designed to describe the action of one who having a free will or choice either intentionally disregards the statute or is plainly indifferent to its requirements.

Wilful when used in reference to a criminal statute means an act done with a bad purpose or an evil intent. In prosecution for fraudulent evasion of income taxes the government is required to prove beyond a reasonable doubt that items which it claims were properly chargeable to income constituted taxable income and that the failure to return them was wilful.

(1454) Now, I think that I have indicated to you generally the contents of the statute. I have told you that wilful, in the sense used in the statute, includes some element of evil motive and want of justification in view of all of the final circumstances surrounding the situation; and, therefore, in order to justify the drawing of an inference of guilt, there must be some proof other than wilful failure to file and wilful failure to pay the tax. There must be something more than a mere omission of the duties put upon this defendant by the statute to file and pay a tax, some effort or attempt, as the section under which he is indicted says, to defeat and evade the tax.

In this case, as in every other criminal case, the defendant is presumed to be innocent until he is proven guilty beyond a reasonable doubt; and the burden of so proving

him guilty beyond a reasonable doubt is upon the government. That presumption of innocence is not just an idle phrase. It is a real and substantial protection which is given to every defendant. He is presumed to be innocent until proven guilty beyond a reasonable doubt.

At no time does this defendant have to prove himself innocent, because the burden of proving his guilt is upon the government and that burden never shifts. And there is a very fundamental reason for that wise and sage provision which our Founding Fathers, in their Heaven-directed (1455) wisdom, made basic in our jurisprudence; because it is very easy to make a charge and it is very difficult and sometimes impossible affirmatively to rebut that charge. Therefore I stress to you the fact that this defendant is presumed to be innocent until proven guilty beyond a reasonable doubt and that the burden of so proving him guilty is upon the government and that that burden never shifts. I shall probably repeat myself, ladies and gentlemen of the jury, many times in the course of my charge. That is not because I am unaware of the tautological element, but simply because I think that there are certain things which must be stressed in order that they might be firmly set in your minds.

I have used the term "reasonable doubt". That term is practically self-explanatory. It is the doubt of a human mind functioning normally and rationally as it does in the ordinary conduct of its daily business; and it has been described and defined by the courts as that state of mind which, after a full comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. Now, if you have such a reasonable doubt of the guilt of the accused and that reasonable doubt is based upon the evidence,

you are in conscience bound to resolve that doubt in favor of the defendant. But the defendant is (1456) entitled to the benefit only of a reasonable doubt, not of any fantastic or remote doubt or a hazy doubt or a doubt based upon your fear that you might conceivably make a mistake. Because you are not to approach your task here with fear, you are to approach it with courage and meet it with fortitude. Nor is he entitled to the benefit of a doubt which might be based upon your unwillingness to convict a fellow-human being because such unwillingness must not be part of your equipment as a juror; it would defeat your competence.

And therefore the defendant is entitled to the benefit of every reasonable doubt begotten from consideration of the evidence, keeping in mind every element of the charge made against him. It must be so proven beyond a reasonable doubt before you would be justified in returning a verdict of guilty.

Mere suspicions or speculations in possibilities or probabilities must not be the basis of your determination because to convict upon a suspicion would be completely repulsive to any decent standard of justice. Or to convict upon speculation would be equally blameworthy. You must arrive at your determination from consideration of the evidence and not from suspicion or speculation.

Now, while a presumption may be based upon facts which have properly been proven to your satisfaction beyond (1457) a reasonable doubt, you may not base a presumption upon another presumption which you have already formed; and while you may make proper, reasonable and logical inferences from facts which you have found to have been proven beyond a reasonable doubt you may not base an inference upon that inference. The evidence, before you would be entitled to return a verdict of guilty,

must be such as to exclude every reasonable hypothesis but that of guilt, before you may convict; if it does not exclude every hypothesis of innocence, you must acquit.

You members of the jury are the sole judges of the facts. You are to determine where the truth lies in the conflict of evidence that has been given at this trial. That somebody lied and committed perjury, is perfectly patent because contradictory stories have been told, and you must say where the truth lies; and the problem of determining that truth is solely and peculiarly yours. And it is a province which may not be trespassed upon by anybody, not by the court, not by counsel for the defense, not by counsel for the prosecution. You have the right to say what degree of credibility you will give to any of the testimony which has been given here. You have the right to consider the way in which the testimony was given and ask yourselves whether or not you believe that the persons giving the testimony told it in the manner of a (1458) straightforward, truth-telling person.

You have the right to ask yourselves about the interest that any witness might have in the outcome of this trial and that, whether it be a witness for the government or for the defense. Certainly the defendant Rutkin has a very strong interest in the outcome of this trial. Whether anyone else has or not is for you to determine; and whether that interest in the outcome of this trial would lead the defendant or any other witness to color his testimony or to lie is for you to say, because, as I have already indicated, the whole business of determining the truth and the weight of the evidence is exclusively yours.

The number of witnesses who have been called by either side is not of itself determinative; you may give it weight, but it is the character of the testimony, the quality of the testimony and not its quantity which should weigh with you.

During the course of the trial the court has made certain rulings but those rulings are in no way to affect you, because I was passing on questions of law. I was not attempting in any way to indicate what my belief was about any particular matter, because, as I have told you, you are the sole judges of the facts.

Now, I trust that it is needless for me to say that your verdict must not be based upon bias or prejudice (1459) or upon sympathy, because a verdict based upon bias or prejudice or sympathy is not a true verdict and is repellant to truth and our basic standards of justice.

There has been some testimony here about evidence given by witnesses in other courts or in other trials or proceedings antecedent to trial, such testimony having been sworn. I believe that one of the witnesses said, "yes, he told a white lie:" But I know of no dictionary or no classification which would make perjury a white lie; and I don't care whether that perjury was committed to help a friend or not, because if you help a friend by perjury, what do you do to yourself? Who knows? But if you believe that any witness at this trial lied in any respect, then you are free to reject all of the testimony of that witness or any part of it. It doesn't mean, if you believe he lied in one instance, that you must necessarily believe that he lied in all instances, because you must apply to every bit of the testimony your test of truth. So the fact that a witness lied in one respect doesn't, as I say, necessarily mean that he lied all the way through but it is something for you to consider in determining what credibility you will give to the rest of that person's testimony; and that goes for every witness that appeared before you.

There was testimony of some previous convictions. The sole purpose of the admission of such testimony is to (1460) affect the credibility of the person who had so

been convicted before. It was not for the purpose of showing a habit of crime-committing; it was not for the purpose of indicating that a person had committed a crime before and therefore would be likely to commit this one. Don't fall into that error. The sole purpose of the admission of testimony as to previous convictions is to affect that person's credibility. Would a person so convicted of crime before be a person in whom you could place trust and reliance. Crooks and criminals have told the truth and criminals have lied; but the only purpose to which you may put that admission is to test the credibility of the person who had admitted, or against whom there had been proven, previous convictions.

There are certain matters to which I wish to advert, but before I do, I will tell you—and this you must keep in your minds—that you are the sole judges of the facts and you are the only persons who have the right to pass upon the credibility of any of the testimony which has been brought out here; if I revert to the testimony it is simply because I think it might be helpful, because two weeks have gone by in the course of the trial and some things may remain in my memory which do not remain in yours; but nevertheless it is your recollection of the testimony always which must prevail. What I say was the testimony (1461) what the United States Attorney said was the testimony or what the counsel for the defense said was the testimony doesn't weigh at all against your recollection. So keep that in mind. And furthermore, keep in mind that this is not the case of Joseph Reinfeld against Rutkin; this is the case of the United States of America against James Rutkin, and don't let anything make you forget that. You are not deciding which is the bigger scoundrel, Reinfeld or Rutkin; they have both blandly admitted on the stand that they prostituted justice in this country; that they paid public

servants to close their eyes to law violation, and that is a canker which eats away at the body public. But you are not passing upon respective degress of scoundrelism between any two people. The bland way in which we were told that the Reinfelds and the Rutkins and the Zwillmans and all of the others prostituted justice should give us cause for pause, but we are not passing on that question now. Don't lose sight of the issue and don't get so worked up about the recitals and portrayals of corruption where we had the right to expect incorruptibility as to put you in the frame of mind where you will say "Oh, we will throw the whole business out." You cannot do that because the Government of the United States is one of the parties here —there being only two parties, the Government of the United States and Rutkin. Anyone else that comes in comes in incidentally (1462) as a witness or as a non-witness or someone who is referred to.

In this stinking recital we found that there existed a combine in violation of law of the United States of America; and that combine seemingly was headed by Reinfeld. At the time that this combine was in evidence Rutkin was on his own. And then came a time when Rutkin joined with the combine. There is no testimony of any kind that the court recalls to indicate that he paid any amount to become a member of this combine. Reinfeld's suggestion was that it was fear that made him take Rutkin in. Rutkin said no, he had certain outlets for liquor, which was his contribution to the scheme. Who is telling the truth? Rutkin said that he ran his one-man business and I think he said he bribed a cop or two with a bottle or two of scotch. But he had these wonderful outlets that he got; he didn't have to pay anybody. He says that's the reason why he was taken into the combine, and then the combine went on and finally ended and there was a distribution, as the court recalls the testi-

mony, or there was an attempted distribution, and the government witness testified that Rutkin was overdrawn $35,000 and there was nothing for him coming out of the combine, of the money which later was used to form Browne Vintners; and in the Browne Vintners Corporation this money wasn't put up in the name of the people that were supposed to be interested (1463) in it, it was fronted for in another attempt to defeat the law, so that there was no record made of the actual parties who owned the stock in the combination, I mean in records of the company.

Time went on and it is Reinfeld's story that he was continually asked by his former associate for money. At various times he said he lost in gambling and then came a time when Rutkin engaged in business down in Florida with William Harrison Dempsey as a front and then there was a financial transaction. Reinfeld's story is that he paid $60,000 to get rid of this person who had been his associate in bootlegging days and had been continually after him, gave him $60,000 to get in that business and took an assignment of all his rights in the company. Rutkin says that isn't true, that he borrowed $60,000 which he later paid back; that he still retained the interest in Browne Vintners. Then in this incredible recital of chicanery came the time when Zwillman and Stacher who had been two of the partners in the skullduggery going on, retained lawyers to recover their interest and at the meeting Zwillman and Stacher were acompanied always by Rutkin. Rutkin did not have a lawyer.

Now, the recital of what happened at these meetings is just as fresh in your minds as it is in mine; but the evidence, as I recall it, would seem to indicate (1464) that at no time did Rutkin have an accountant or a lawyer representing him, while Zwillman and Stacher did. And incidentally let me say here now that no matter what your

verdict may be, it need not reflect on any of the lawyers present, because lawyers don't necessarily know all about their clients, so that needn't enter into your consideration at all except in so far as the testimony of these lawyers is concerned, and how far you intend to let that weigh with you.

But then we come to the admitted payment of $250,000. Rutkin says that that $250,000 was a final settlement of his claim in Browne Vintners, and if that is so—and the government does not contend that the capital gains tax was not paid—he would not be obliged to report that income. But Reinfeld says no, "that was the result of extortion. He got that money out of me by threatening me and my family", and he told the instances where those threats were made. There is one piece of corroboration of that, and that is from one of the six or seven people who were present in Holtz's cellar. There was some comment made by counsel, both counsel, as to why Zwillman and Stacher were not here, and I resolved that at the time by saying that the processes of this court were open to both of them.

If that money was extorted and was paid as a result of threats, then it was taxable income and Rutkin (1465) was under the duty of reporting that tax. But as I indicated to you before, the mere failure to report it doesn't satisfy the requirements of the law with regard to the violation of this statute, there must be something else which will indicate the willful intent to defeat and evade the tax. You may consider other elements that appear in the evidence, the fact that this money was paid over in cash; that no record of any kind was made of the receipt of that money; that the money was split and $100,000 of it sent to the sister-in-law of the defendant to be placed in her vault or "wault", as it has been called here, and that the other $150,000 was placed in the defendant's own vault. You may consider these as factors surrounding the whole transaction.

Rutkin says that he kept no books; kept no books at that time nor at any other time; kept no books when he received his profit, sixty, seventy, eighty thousand dollars a year, I think it was, from the bootlegging, and admits that he paid no tax; kept no books when he got this $250,000. These are all things that you may consider as circumstances surrounding the whole procedure. The payment of $250,000 was made in the presence of other people, these people being Zwillman, as I recall it, and Stacher who were there with Rutkin and the lawyers. Well, neither the lawyers nor any of these people, it seems to me, would be inclined to go out and publish it.

(1466) Reinfeld has testified that he thought that Kessler was representing him as well as Zwillman and Stacher. Kessler said he made it perfectly evident that he didn't, but Kessler had represented Reinfeld before. There was some comment made about this assignment and the defendant's explanation of that is that somebody said, "If signing this will make you happy—" that is for you to determine.

Now, this is not a slight case or a small case. It is a serious case. The ordinary salaried individual is expected to pay a tax to the government and that tax is to carry on every activity of our government. It is to carry on the expenses of the administration of justice. It is to carry on the expenses of war; it is to carry on the essential functions that are part of government, and the little fellow who gets a salary has his money taken out of it weekly. But the operator, whether he be a gambler or one who works independently must report, himself, and there is an obligation in law for him to report.

Now, the mere fact that this is not what is called malum in se does not detract from the legal obligation upon every

citizen to report and pay taxable income. I know that too many people think that evasion of income tax is just something smart. It isn't smart. It is chiselling, because what one person who owes a just tax doesn't pay, the next man has to pay and that is not a trifling thing. (1467) So this is a serious charge and must not cavalierly be passed over in a light manner.

There were certain requests which were made upon me to charge you. One of them relates to reasonable doubt. Of course reasonable doubt can be begotten by the evidence brought out or by the failure or lack of evidence. And in so far as wilfullness is concerned, it means that the person charged with wilful attempt to evade must have knowledge. There is no contention here that the defendant didn't know he got the $250,000; the whole point is whether he got it by extortion or whether he got it properly. If he got it properly the tax was already paid.

A further request reads as follows: "The fact that Rutkin admitted he engaged in certain businesses that are prohibited in some states of the United States cannot be used by you in any way to affect his credibility—it says creditability, but it means credibility—or be considered as evidential upon any element of the offense he is charged with in this indictment before the court". That refers to Rutkin's admission that he was engaged in some gambling activities with Adonis and others up in Passaic County. That is not a conviction, and it may not be used by you to affect his credibility; it is simply part of the whole picture, of course, which has been brought out before you.

You will go to the jury, members of the jury, with (1468) open minds. Do not go in with your minds already made up and stubbornly refuse to listen to your fellow-jurors. You are to go in there and discuss this matter and

compare notes and try to be mutually helpful. And then when you feel that you have covered the situation thoroughly, the individual duty of each juror is to follow the dictates of his mind and his conscience. Don't have any compromise verdict. Follows the dictates of your conscience and then you will have performed your duty. Don't get a preconception and stand stubbornly against all argument, but remember that you are twelve good and true persons who are trying to do the job which you were sworn to do and you must so mutually be helpful.

I have told you that this is a serious case. It is. And I have told you that there are two parties to this case, and those parties are not Reinfeld and Rutkin, they are the United States of America and James Rutkin. James Rutkin as a defendant at this bar of justice is entitled to every protection that the law gives him. I have tried to point them out to you and to stress them. None of these protections may be taken from him. The presumption of innocence goes with him all the way through the trial right down to the last moment of your deliberations and can be taken from him only by a verdict of guilty should you believe that the government has proven his guilt beyond a reasonable doubt. It is a real protection and it is some (1469) thing that you must be very careful of. Everything that I have pointed out that safeguards his liberty it is your bounden duty to keep in mind.

But as you do that you must remember the other party to the controversy, the United States of America. Now, the United States of America is not just some far off idea or some distant concept. The United States of America is you and I and about one hundred and forty-five or one hundred and fifty million of our fellow citizens who are banded together under law, trying to live in peace and comity with ourselves and with the rest of the world;

trying desperately to make this America what so many men have suffered and died to make it; the land where justice exists; the land where honesty and decency is represented; where we have selected the government; where we won't be governed by any supergovernment, by any deleterious influences, but where we will be governed under our principles of freedom by the men and women that we select to govern us and that we hope will live up to the sacredness of their oath of service, although you have had a sample here where that is not quite true. But under God that is what we are aiming at. We are aiming at freedom and truth and justice.

And so the people of the United States have their rights too and those rights must be guarded just as jealously as the rights which you guard jealously for James Rutkin. ((1470) The Government of the United States doesn't ask you to sacrifice anybody to prove its might. It asks you to do justice. That's all that Rutkin has a right to ask you to do, and that's what the government of the United States asks you to do. It asks you to remember its rights too, remembering that unpunished crime, undetected crime, are threats to the majesty and dignity of our government; and that unpunished crime undermines our government. We all of us must do that which is our duty and do it without fear or favor. And so, keeping the balance between the two parties to this suit, the United States of America and James Rutkin, do justice between them. And I know of no better way in which to recall to you that which you must do than to recall the words of your oath, "a true verdict to render according to the evidence, so help you God". And if you do that, no one may quarrel with your verdict.

(At side bar.)

Exceptions to Charge

The Court: I have tried only to give the general principles which are included in your requests to charge. The request to state the evidence I refuse to state in the manner requested except as I have coverd it now. Hav you anything else to suggest?

Mr. Van Riper: I have some exceptions for the record which we can take after the jury leaves.

The Court: No, no.

(1471) Mr. Van Riper: Oh, you want them now

The Court: Yes.

Mr. Van Riper: Your Honor said that as far as you, could recall there was no testimoney that Rutkin paid for his admission to the combine. Now, Rutkin says himself that he paid $60,000.

The Court further charged the jury as follows:

Counsel has called my attention to the fact that in the course of his testimony Rutkin did say that in his discussion with Reinfeld, Reinfeld said that he would require $75,000 and that later Rutkin told him "I could raise $60,000" and that he, meaning Reinfeld, said "All right, you can owe me $15,000". So you will add that to what I have said, my recollection having been that the entry price was the outlet, and he says he paid the $60,000.

(Side bar.)

Mr. Van Riper: Thank you, sir. Now, then I desire to take an exception to that part of your Honor's charge which said "If you believe the witness lied, you may disregard all of his testimony.

The Court further charged the jury as follows:

Counsel has said to me that I told you that if you believe the witness lied in any respect you might disregard all of his testimony. What I had in mind is that if you find that he lied you may accept or reject such testimony

as you (1472) believe to be false or true, accept the true and reject the false and if you had any other impression, please correct it to that extent.

(At side bar.)

Mr. Van Riper: I except to that part of your Honor's charge which says "If the money was extorted it was taxable", purely on the legal proposition, of course.

Mr. Van Riper: Exception to your Honor's reference to disposition of the moneys, the $250,000, after Rutkin had received it. Also the reference in that part of your Honor's charge where you talk about the fact that Rutkin did not keep books and you said as I recall it that "you, the jury may consider if he kept no records he paid no tax during bootlegging". Now, that is true, but I don't think you have any right to consider that, the fact that he paid no tax during bootlegging as indicating he is guilty of this charge.

The Court further charged the jury as follows:

Counsel has called my attention to the fact that I said the defendant Rutkin kept no books and paid no tax during prohibition days. That was the testimony. That was not to show, the fact that he didn't pay the tax at that time didn't mean that he didn't pay at this time, but simply to show a course of conduct which you might consider in determining whether or not he attempted to evade this tax.

(1473) (At side bar.)

Mr. Van Riper: And may I have an exception to that part of your Honor's charge which made reference to the fact that lawyers were present. As I recollect your Honor said it was not to be expected that lawyers would publicize the payment of the money.

Just for the record, may I have an exception to that part of your Honor's charge where you talked about un-

punished crime at the end. Now, my friend has one exception to those requests that were not charged. We have an exception to that.

The Court: Well, I want you to specify what you except to.

Mr. Van Riper: Well, your Honor called my attention to two that you were not going to charge, 22 I think—

The Court: 21 and 22.

Mr. Van Riper: May I have an exception to your Honor's refusal to charge Requests number 21 and 22. May I also have an exception to your Honor's reference to the fact that if one will commit perjury to help a friend he may do it likewise to help himself, something to that effect.

I request an exception to your Honor's reference to the release, we saying that that constituted a record of the receipt of the money.

All right, sir. Thank you very much.

(1474) The Court further charged the jury as follows: So, ladies and gentlemen of the jury, you may take the case and the two alternates will, of course, not consider the case. The jury will retire to consider this case, the alternates remaining here, and the exhibits will be sent in to you.

Swear the bailiffs, please.

The bailiffs were sworn and the jury retired at 3:40 P. M.

The Court: The alternates are now excused with the thanks of the Court. Now, will you gentlemen check the exhibits.

Mr. Van Riper: Before the court leaves the bench may I make an observation?

The Court: Yes.

Mr. Van Riper: As your Honor knows, we have been here for practically two full weeks. It has been a trial of some duration, I think some thirteen or fourteen hundred pages of testimony. I just want to take this opportunity to express the gratification it was to have the opportunity to try this case in the manner in which it was tried, and for the fair trial which we have been accorded. Those exceptions which I have just taken to the charge I of course had the right to take. During the course of the trial I think your Honor has treated both sides fairly and impartially. (1475) There have been times when we have felt the full effect of the alertness of your Honor's mind, but I am sure it has applied equally to the District Attorney and myself. I think the most unusual thing in a trial that lasted this long, while there have been objections and your Honor has ruled on them, sometimes overruling, sometimes sustaining the objections, I think it is safe to say there are not half a dozen objections in the record up to the time of the exceptions to the charge. In fact I can only recall two or three, and I think that is an unusual situation. In all trials I have been in and I have participated in one or two, I don't recall such things happening. It is a tribute to the manner in which the trial has been conducted.

It has been a pleasure to try a case with Mr. Tyne. He has tried it as a good lawyer and as a gentleman. I am thankful to have had the opportunity to be associated in a case where he has been my opponent.

The Court: I might speak of the extraordinary skill with which this trial has been conducted on the part of the defense, but I feel it isn't necessary to make any comment.

Mr. Tyne: I would thank the court too, and return the compliment paid to me by Mr. Van Riper and I can say that I have learned a great deal from him.

Defendant's Requests to Charge

The Court: All I can say is that the court has (1476) done only that which it does in any case that comes before him.

(Further exceptions were taken as follows):

Mr. Van Riper: I take an exception to your Honor's refusal to charge 22 and 23. Mr. Cohen says there are others that have not been charged.

The Court: I told you that so far as the requests were concerned I refused to charge them in the language requested.

Mr. Van Riper: Yes, and we have an exception, sir.

At 5:05 P. M. the jurors resumed their seats in the jury box.

The Court: Members of the jury: You have asked for the testimony of three witnesses. I think that I shall ask you to rely on your recollection. You have heard all those witnesses testify and they testified with clarity and distinctness before you and I think that you had better just rely on your recollection. All right. Anything else troubling you?

The Foreman: Not at the moment.

(The jury retired at 5:06 P. M.)

(1477) DEFENDANT'S REQUESTS TO CHARGE

1. The jury are instructed, as a matter of law, that the indictment in this case is nothing more than a mere formal charge, and that the fact that a Grand Jury has returned the indictment is not to be considered as the slightest evidence of the truth or correctness of any of the allega-

tions made in the indictment, or of the truthfulness of the charge or charges contained therein. You are further instructed that the indictment is not the slightest evidence of the defendant's guilt, and that accordingly, during your deliberations you are not to consider the indictment as evidence against the defendant, or permit it, in any manner, to weigh against him.

2. A defendant's plea of not guilty to the indictment puts in issue every material allegation of fact contained in the indictment and each count thereof. You are further instructed that throughout the trial, the defendant's plea of not guilty serves as his continuing denial of the evidence offered against him by the prosecution pursuant to its ever present burden of proof.

3. The defendant is presumed to be innocent of the crime with which he is charged. This presumption of innocence has the weight and effect of evidence in his behalf. It is your duty to approach the consideration (1478) of each fact and circumstance in evidence with that presumption in mind. It continues to operate in favor of the defendant until and unless it is overcome by such a weight of competent evidence that you are left without a reasonable doubt of his guilt. The presumption of innocence attends the defendant throughout the trial, and throughout your deliberations after the case has been submitted to you, until you actually arrive at and agree upon a verdict. In determining yor verdict you are to keep in mind that the Government at all times has the burden of overcoming this presumption by evidence, and unless it has been overcome by proof of guilt so strong, credible and conclusive as to convince your minds to a moral certainty and beyond a reasonable doubt, your verdict should

be not guilty. This presumption of innocence outweighs and overbalances all conjectures, innuendoes, suspicions and suppositions, and can only be overcome by proof of guilt beyond a reasonable doubt.

4. The presumption of innocence with which the defendant is at all times clothed is not a mere form to be disregarded by you at pleasure, but it is an essential, substantial part of the law and binding on you in this case, and it is your duty in this case to give the defendant the full benefit of this presumption, and to acquit the defendant, unless the evidence in the case (1479) convinces you of his guilt as charged, beyond a reasonable doubt.

5. If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you must do so, and in that case find the defendant not guilty. You cannot find the defendant guilty unless from all the evidence you believe him guilty beyond reasonable doubt.

6. The jury are further instructed that if the evidence in this case is only sufficient to create a suspicion in your minds, it is not such evidence as would justify you in rendering a verdict of guilty, no matter how unfavorable such suspicion may be, and accordingly, unless you are satisfied, beyond a reasonable doubt, by the evidence of the truth of the charges, your verdict must be not guilty.

7. You are instructed that a defendant is not obliged to prove that he is innocent of the charges made against him; on the contrary, the burden of proving his guilt is upon the Government. The Government must prove each

fact and circumstance essential to the guilt of a defendant, and each such fact and each such circumstance must be proven beyond a reasonable doubt before a verdict of guilty can be found against the defendant. This burden which the Government has of proving each and every fact which is material and essential to prove the guilt of a (1480) defendant beyond a reasonable doubt never shifts but always remains with the Government throughout the trial. So if the Government has failed to satisfy you beyond a reasonable doubt of the truth of each and every fact material and essential to the guilt of the defendant, either because there is no testimony supporting an element, or because you are not convinced by the testimony in support of any one element, it is your duty to bring in a verdict of acquittal.

8. If there remains in the minds of the jurors a reasonable doubt as to whether or not the prosecution has established any one element which is a necessary or essential part of the offense, to a moral certainty and beyond a reasonable doubt, then you must find the defendant not guilty. This applies to the jurors as a whole and to each individual juror.

9. A reasonable doubt is that state of mind which, after a full comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. It is not sufficient to establish a probability, even though a strong one, arising from the doctrine of chances, that the fact charged is more likely to be true than untrue. The evidence must go further and establish (1481) the truth of the charge to a reasonable and moral certainty—a certainty that convinces

and directs the understanding and satisfies the reason and judgment of the jurors.

10. If you find that the witness, Joseph Reinfeld, offered by the Government, intentionally testified falsely to any material fact, you have the right to disregard and reject his entire testimony.

11. You, members of the jury, are the sole judges of the facts, the weight of the testimony, and the credibilty of the witnesses; you must rely on your own recollection of the evidence and must not accept any statement by counsel or the Court of what the evidence is unless such statement coincides with your own recollection of the testimony.

12. The indictment charges that the defendant did wilfully, knowingly and unlawfully attempt to defeat and evade income taxes due and owing by him—for the calendar year 1943. In order to sustain this charge, the Government must prove beyond a reasonable doubt, first, that an income tax was actually due from the defendant for the year in question over and above the amount he returned and paid. Second, that the defendant wilfully, knowingly and unlawfully attempted to defeat and evade said tax and its payment. If you find the (1482) Government has failed to prove either of these essential facts, your verdict must be not guilty.

13. You are instructed that a person is not required under the law to report in his income tax return all moneys that he received during a calendar year. He must report only taxable income, and the bare fact that a man has received a sum of money does not establish that the money

is taxable income. Nor does it prove that an income tax is due on account of it, or that he is obligated by law to report it as income.

14. It is not sufficient for the Government to prove merely that the defendant, during the year 1943, received money which was not reported in his return; the Government has the burden of proving beyond a reasonable doubt that such money constituted taxable income, under the income tax law, and that an income tax was actually due from the defendant for the years in question, over and above the amount reported by him, and also, that he knowingly, wilfully and unlawfully attempted to evade or defeat such tax and its payment, and if it fails to do so, the defendant must be acquitted.

15. The jury are instructed that the burden is not upon the defendant to show that his income tax returns are correct and that he has fully paid all of the tax that was due. On the contrary, the burden rests (1483) upon the Government to prove beyond a reasonable doubt that the defendant knew it was false and fraudulent and that he knowingly filed a false and fraudulent return for the purpose of wilfully evading and defeating an income tax.

16. Before an attempt to evade or defeat a tax or the payment thereof can be regarded as "wiilful", there must be proof beyond a reasonable doubt not only of the defendant's obligation to pay a tax on net income beyond the tax already paid, but in addition, there must be proof beyond a reasonable doubt of the defendant's specific evil purpose and wrongful intent, that is, there must be proof beyond a reasonable doubt that the defendant knew and was aware of his said obligation, and with such knowledge,

intentionally, designedly and with evil purpose to do wrong, attempted to evade and defeat it.

17. Even if you should find the defendant may have received net income over and above that reported, and that he failed to report such excess net income or pay a tax thereon, nevertheless, unless you also find beyond a reasonable doubt that he wilfully, knowingly and unlawfully attempted to defeat and evade the income tax due and owing within the meaning of the word "willful" as the court has defined the term, you must acquit him.

18. The Government is prosecuting the defendant for wilfully attempting to evade and defeat the payment (1484) of an income tax. An acquittal of the defendant on that charge would not mean that he would not have to pay a tax if one is found to be due. The obligation to pay a tax is a civil liability and the Government may enforce its claim for any tax or penalties that it can prove to be due in a civil proceeding, irrespective of whether or not you find the defendant guilty or innocent.

19. You have heard the testimony of the Government witness Bonnano, to the effect that certain additional tax would be due, assuming that the defendant received additional income over and above that which was reported in his returns. This testimony is a mere calculation and does not constitute any evidence either that the defendant received any such additional income upon which any additional tax was due or any evidence that any income tax was actually due from the defendant for the year in question over and above the amount he reported and paid.

20. The jury are instructed that many questions in connection with the income tax law are involved, intricate, technical and difficult upon which experts, lawyers and

judges often disagree. Therefore, even if you should find that the moneys the defendant received or handled did in fact and law constitute income on which he was obliged to file a return or pay a tax, and he failed to do so, unless the government also convinces you beyond (1485) a reasonable doubt, that the defendant actually knew and believed that this was so, and with such knowledge intentionally, designedly and with evil purpose to do wrong, attempted to evade and defeat the tax and its payment, you must acquit him.

21. The defendant contends that the $250,000.00 received by him on May 11th, 1943 was not reported in the Defendant's income tax return filed on March 15th, 1944, because it was not taxable. If you find that this money was not taxable, then there was no obligation on the defendant to report it in his income tax return and he should be acquitted.

22. It is for you to decide, as a matter of fact, whether or not this sum of $250,000 was taxable. The Government contends that the money was received by Rutkin as a result of threats made by him to the witness Reinfeld, which threats Reinfeld says were unaccompanied by any claim of the defendant to any right in the money. In order to find the defendant guilty, you must be satisfied beyond a reasonable doubt that he did not have any right to this money, that he threatened and intimidated Reinfeld, and that the money was paid to him only because of said threats and intimidations.

23. In deciding whether or not this money was paid as a result of a threat, you must take into consideration (1486) the relationship which existed between Reinfeld and Rutkin over the years as shown by the testimony, take

into consideration the testimony of all the witnesses as it has been given here, remembering that the only testimony as to the threats is that of Reinfeld himself and such corroboration as was furnished by the witness Holtz. To this testimony you should apply not only the test of truthfulness but the test as to whether or not under all of the circumstances as disclosed by the evidence you are satisfied beyond a reasonable doubt that these threats were made.

24. In determining whether or not, as a matter of fact, the money was paid as a result of threats, you must, of course, take into consideration the testimony of the witness Kessler, a reputable member of the Bar of this Court, who testified that at the meeting at Holtz' house when he inquired as to the reason for Rutkin's presence that Reinfeld said that he (Rutkin) has the same claim as your people (meaning Zwillman and Stacher), he says he did not get all of his money; and the further testimony of Kessler that at the meeting in his office when the settlement with Zwillman and Stacher was finally agreed to, that Rutkin arose and inquired, "What about my claim", and that at Kessler's direction, Reinfeld and Rutkin went into another room and, after being there for (1487) some minutes, came back and Reinfeld announced that they had settled their differences for $250,000.00 whereupon, according to Kessler, they both shook hands.

25. This testimony of Kessler's, you will recall, is supported by the witness Mehler, who is also a reputable member of the Bar of this Court, and who was present as one of the attorneys representing Reinfeld to the extent that he says that Rutkin was present in Kessler's office and that Rutkin and Reinfeld went into an adjoining room, that before they went in, Rutkin made an inquiry, and that

when they returned from the room, Reinfeld announced his willingness to pay Rutkin $250,000.00. It is further corroborated by the testimony of Rutkin himself. It is contradicted only by the testimony of Reinfeld admitting that he and Rutkin went into another room at Kessler's suggestion and that, while there, he agreed to pay Rutkin $250,000.00 although Reinfeld says this took place at Holtz's house.

27. In so far as there is conflict of testimony as to the matters just referred to between Kessler and Reinfeld, it is for you to determine, from the evidence and from your observation of the witnesses upon the stand, whether you believe Kessler or Reinfeld. If you believe Kessler's testimony as to what took place both at Holtz's house and in his (Kessler's) office, you must ask yourself (1488) the question of whether or not this conduct on the part of both Reinfeld and Rutkin is consistent with the theory of the money being paid under threat and intimidation as testified by Reinfeld. If you believe Kessler's testimony and conclude that the circumstances detailed by him are inconsistent with the theory that the money was extorted from Reinfeld by Rutkin's threats and intimidation, then the defendant should be acquitted.

28. You should also take into consideration the testimony of Kessler to the effect that after the settlement had been agreed to between all concerned, the qustion was asked in Rutkin's presence as to whether or not these monies were taxable and that Reinfeld said they were not, and that Cohen, the accountant for Browne Vintners, said the same thing and produced a sheet represented as containing the list of stockholders of record of the Browne Vintners Company, and demonstrated to Kessler from that sheet the fact that the capital gains tax had been paid on

all of the Browne Vintners stock, this demonstration taking place in the presence of Rutkin. If you believe that this statement was made by Reinfeld and Cohen to the effect that the tax had been paid, then you must acquit the defendant because he was entitled to rely upon the advice given by Cohen.

29. It is admitted that the capital gains tax on the sale of all of the Browne Vintners stock was paid, (1489) and, therefore, if the money which Rutkin received came to him as a result of his interest in Browne Vintners stock, it was not taxable, he was under no obligation to report it in his income tax return for 1943, and he must be acquitted. Even if you believe Rutkin made threats to Reinfeld and that these threats produced the money, if the money was in payment of Rutkin's interest in the Browne Vintners stock, he should be acquitted.

30. The defendant is not obligated to prove his innocence. The government is required to prove his guilt beyond a reasonable doubt. The question for you to consider is not whether you have a doubt as to Rutkin's claim to a stock interest in Browne Vintners but whether you are satisfied beyond a reasonable doubt that he received this money solely because of threats and intimidation and without any rightful claim thereto on his part, even if you have a doubt as to Rutkin's claim of a stock interest in Browne Vintners, nevertheless, if you are not satisfied beyond a reasonable doubt that he received the money as a result of threats and intimidation, then you must acquit him.

31. In your deliberation, you must take into consideration the uncontradicted testimony to the effect that at least 700 shares of stock having a sale price of $2,000,000.00 was what has been described as "fronted" (1490) stock,

and that the real owners of this stock were not known and have not been disclosed in full at the trial. If you believe the testimony of Rutkin as to his ownership in a stock interest supported as it is by the two statements which the defendant puts in evidence—the one received by Rutkin from Kanengiser who in turn received it from Cohen, and the other received direct from Reinfeld and supported also by the testimony of Kessler as to the statement made by Reinfeld in Holtz's house and the statement made by Rutkin in Kessler's office, then you would be justified in finding that some of the "fronted" stock was being held for Rutkin. In connection with consideration of this "fronted" stock, you will recall that the testimony is that other, particularly Zwillman and Stacher who were the actual owners of stock which had been "fronted" for them, received the money and did not report the same nor pay a tax thereon, relying upon the statement of Cohen and Reinfeld to the effect that the tax had been paid.

32. If Rutkin failed to make a report in his income return of the receipt of this money because he relied upon the statement of Cohen and Reinfeld that it had been paid, he is entitled to be acquitted even though, as a matter of fact, the tax had not been paid.

33. The defendant has frankly admitted that (1491) heretofore he was convicted of crime. It is my duty to caution you that the mere fact that he has been previously convicted of crime cannot be considered by you as any evidence of his guilt of the offense with which he is charged in this indictment. You may consider his conviction of crime only in passing upon his credibility as a witness and for no other purpose. You may, however, conclude that his previous conviction of crime does not affect his credibility in the least. This applies equally to

the witness Reinfeld or to any other witness whom the evidence discloses has heretofore been convicted of a crime.

34. The defendant is entitled to the benefit of a reasonable doubt on the evidence presented or lack of evidence. In other words, a reasonable doubt as to the guilt of the defendant may be engendered by a lack of evidence.

35. If the defendant Rutkin believed on reasonable grounds that the money received by him from Reinfeld was not taxable, then he cannot be guilty of a willful attempt to evade or defeat the payment of the tax.

36. There are only two possible hypotheses in this case. If you believe the hypothesis advanced by the defense, to wit, that the defendant had an interest in Browne Vintners and received the $250,000.00 in payment of his interest in Browne Vintners, you must acquit.

(1492) 37. If you find that the defendant had an interest in Browne Vintners to the extent of all the monies which he received after the sale of Browne Vintners, then you must acquit.

38. If you find that the defendant had an interest in Browne Vintners, you must acquit.

39. If you find that the defendant did not receive the $250,000.00 as a result of threats against and intimidation of Reinfeld, as testified to by Reinfeld, you must acquit the defendant.

40. The defendant's admitted failure to include the $250,000.00 in his 1943 income tax return and to pay tax thereon will not support a conviction under this indictment. Unless you find that in addition to these omissions, the defendant made some other affirmative willful attempt to

defeat or evade the payment of income or victory taxes for 1943, you must acquit him.

41. It is the obligation of each juror in attempting to arrive at a verdict to consult with his fellow jurors. However, each juror must arrive at his own conclusion as to the guilt or innocence of the defendant and vote accordingly.

42. The fact that the defendant Rutkin failed or omitted to file a return and to pay a tax for any period not embraced in the indictment being tried in this case (1493) is not in anywise to be considered evidential against the defendant by you as jurors.

43. The fact that Rutkin admitted he engaged in certain businesses that are prohibited in some states of the United States cannot be used by you in any way to affect his credibility or be considered as evidential upon any element of the offense he is charged with in this indictment before the Court.

44. Unless you find that the testimony given by Rutkin before Judge Bromberger in New York City, in another matter not in anywise connected with the offense charged here, is material to the offense charged in the indictment you cannot use the same in any way against the defendant during your deliberations.

45. Whether Rutkin received the money from Reinfeld under circumstances as related by Reinfeld or whether Rutkin received the money from Reinfeld under circumstances he related on the stand, I charge you that if you find the former that it was not necessary by virtue of the law to report the money in his return because it was not taxable. If you find the latter then I charge you that the money was tax paid monies and it was not necessary for him by virtue of the law to report the same in his return.

Transcript of Hearing on Motions on Behalf of Defendant Before Sentence

(1) UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Ind. 134-50.

UNITED STATES OF AMERICA,

vs.

JAMES RUTKIN,

Defendant.

Appearances:

For the Government:

CHARLES J. TYNE, Esq.

For the Defendant:

SIDNEY SIMANDL, Esq.,

JACK COHEN, Esq.

Hearing on various motions in behalf of the defendant, before the HON. THOMAS F. MEANEY, *J.*, at the Federal Building, Newark, New Jersey, on Friday, October 27, 1950, at 10 A. M.

THERESE CROSS BERGEN CSR
Official Reporter

Hearing on Motions on Behalf of Defendant Before Sentence

(2) Mr. Simandl: If your Honor please, before imposition of sentence in this case counsel has a motion he desires to make.

The Court: All right.

Mr. Cohen: Your Honor, this is a motion under Rule 30 under which the defendant has five days after discharge of the jury to make the motion. Ordinarily this motion should be made in writing. In view of the fact that the five days have not elapsed, may I assume we have the permission of the court to make it in this fashion at this time?

The Court: All right.

Mr. Cohen: The motion at this time, your Honor please, is that the defendant here through counsel renews the motion for a direction of acquittal which was made at the end of the defendant's case. In the alternative, he asks for a new trial upon the following grounds—this of course is with due deference to your Honor. Defense charges there were certain errors committed during the trial in the admission or rejection of testimony.

Secondly, defendant through counsel contends that the court erred in refusing to charge certain requests that were submitted on behalf of the defendant.

Thirdly, defendant repeats all of the grounds in support of the motion for judgment of acquittal that (3) were urged upon the court at the conclusion of the defendant's case.

Now, with respect to the particular charges to which defendant takes exception to your Honor's refusal to charge there appears to be some difficulty in the record that was made of the conversation at side bar and also some question as to whether or not the particular requests were specifically called to your Honor's attention. I hope we may at this time remedy that and bring them more fully to the attention of the court. Specifically at that time

we believe that the record may clearly indicate that there was an offer on the part of the defense to call to your Honor's attention by number the particular charges which he felt had not been charged.

The Court: There were two particular requests called to my attention to which Mr. Van Riper took exception and I then said as I recall it that I refused to charge the other requests except in so far as I had charged. I refused to charge in the language requested.

Mr. Cohen: That's right. Now, as I understood that, that was a refusal on the part of the court to charge any of the other requests.

The Court: That is exactly what it said and I think it is perfectly explicit.

Mr. Cohen: In view of your Honor's—

(4) The Court: No, there will be no trouble about it.

Mr. Cohen: May I say with respect to that particularly, your Honor, that we contend at the present time that the court was in error in refusing to charge these particular requests: there were three requests; I will give your Honor the numbers of them in a moment which called this situation to the court's attention. There was a possible hypothesis in this case which the jury did not have under consideration in view of the fact that these requests were not charged and that was this situation. Assuming that the jury could find from the facts that this defendant had had an interest in the Browne Vintners Company as a result of which he received this money; and assuming that the jury further found that he had resorted to the threats described in order to secure the collection of the money which was rightfully his, that the money would nevertheless not be taxable. We had three specific requests, each in various language in asking the court to place that hypothesis before the jury. Those requests were not charged.

Hearing on Motions on Behalf of Defendant Before Sentence

The Court: All right.

Mr. Cohen: We contend—

Mr. Simandl: May I also be heard?

The Court: I prefer one counsel to argue.

Mr. Cohen: Secondly, with respect to the rejection of evidence, the particular matters which we (5) desire to call to the court's attention at this time are these: that all during the case it would seem to be the theory that the conversations with Mr. Cohen, the accountant, were not admissible. It appears to us that that ruling is incorrect in view of the fact that this was not, as the court pointed out, a trial between Reinfeld and Rutkin, but rather one between the government and Rutkin and that upon that theory conversations with Mr. Cohen which might have been relevant upon any element of the indictment, should have been admitted where the defense offered to prove that Rutkin was a party to those conversations or had knowledge of them.

Third, and again with due deference to your Honor, with respect to my remarks as to the charge generally, counsel feels that included in your Honor's charge were certain comments upon the testimony and certain collateral—

The Court: Did you take exception to them?

Mr. Cohen: In my understanding it was done, sir. That those remarks were of such a nature that they were prejudicial to the defendant and that they tended to have the jury return a verdict which was based not particularly upon the evidence, but upon either bias or passion.

Third, and the one ground I would like to discuss the many grounds urged upon your Honor for the judgment (6) of acquittal both at the conclusion of the State's case and at the conclusion of the defendant's case, is with respect to whether or not this money was taxable under the theory of the Wilcox case.

Hearing on Motions on Behalf of Defendant Before Sentence

The Court: We discussed that. You needn't argue it; all you need do is restate your motion now, because I don't feel that it would serve any valid purpose now to argue it further. Your record will be complete if you state your motion because I have already ruled on all of the questions raised so far.

Mr. Cohen: And particularly—

The Court: I see no reason at this time to change my determination.

Mr. Cohen: And of course since the return of the jury's verdict we again urge upon your Honor that the verdict is definitely not one supported by the evidence. That upon all the evidence in the case, no reasonable person could come to the conclusion that the defendant was guilty except if such verdict were based, not upon the evidence, but either upon bias or prejudice; and furthermore that the verdict was against the clear weight of the evidence.

The Court: All right. Now, does that set forth the whole extent of your motion?

Mr. Simandl: May I state one thing for the (7) record, your Honor?

The Court: Yes, you may. I do not make it a practice to permit the argument to be divided between lawyers, but you may do it.

Mr. Simandl: It was my understanding that your Honor allowed—

The Court: Proceed, proceed.

Mr. Simandl: We also call your Honor's attention again to the remark made by the District Attorney at the time of summation when he said that he had a record of a conviction against the defendant which he stated the defendant had admitted; such a remark was prejudicial to the defendant and I do not believe was specifically alluded to by your Honor in his charge.

Hearing on Motions on Behalf of Defendant Before Sentence

The Court: Nor was there any request for same.

Mr. Simandl: That is true, your Honor. However your Honor, in the morning did foreclose me from—in fact I didn't know whether you were going to accept the charges which I gave you that morning, so that—

The Court: You were foreclosed of nothing. It was in your right. If you have any further objections to note on the record, please note them.

Mr. Simandl: At the time of the side bar conference after the verdict, I came to the side bar with Judge Van Riper—

(8) The Court: After the verdict?

Mr. Simandl: No, before the verdict.

The Court: Well, you said after the verdict.

Mr. Simandl: Before the jury retired and I had written down specifically several exceptions and your Honor stated that I was not permitted to state them but only to state them through Judge Van Riper. I had appeared in the case, made a motion, was counsel of record at the very beginning.

The Court: Mr. Van Riper was trying the case. Mr. Van Riper was taking exceptions and I said that I would hear one counsel. You had ample opportunity to discuss with Mr. Van Riper anything that you desired to have him bring to the court's attention and you did so discuss it. Now, if you have—

Mr. Simandl: I want to discuss something which is apparently not in the record.

The Court: That apparently is a basis for appeal. This is a motion now for arrest of judgment or to direct a verdict of acquittal at this time.

Mr. Simandl: For the purpose of the record on appeal I did call Judge Van Riper's attention to the remark concerning what your Honor said about taxes and also what your Honor said about justice and I asked for an exception

on that ground. I don't see anything in the (9) record; whether Judge Van Riper did it or not—

The Court: You ask for an exception now?

Mr. Simandl: I think the record ought to show it.

The Court: The record will show what was said and if there is any question of quarrel with the record you may bring that to the attention of the Circuit Court if you take it up on appeal. All right. Anything further in your motion

Mr. Cohen: I would simply like to say this, that counsel reserve for the appeal any of the grounds urged in support of the original motion that I have not mentioned in support of this motion.

(Sentence by the Court.)

Mr. Cohen: Will your Honor hear an application for bail at the present time?

The Court: Yes.

Mr. Cohen: If your Honor please, with respect to bail, of course some of the same questions which were raised in support of the motion may be raised to indicate to your Honor that there is a substantial question on appeal, that is with respect to appeal and on appeal, directed to your Honor. Those questions may be decided against the defendant. I think they raise questions on which the Circuit Court of Appeals should pass and I would like to refer now to the Wilcox case because I think that presents the situation and the question which should (10) be clarified by either the Circuit Court of Appeals or even by the Supreme Court of the United States. I don't intend to go fully into the questions raised in the Wilcox case except to say that the facts and the rationale of the decision are so close to the facts in this case that there is a substantial argument for the appeal.

In the Wilcox case as I understand the rationale of the decision—I don't give the citation because your Honor is familiar with it—the rationale of the case is definitely this: When a man comes into receipt of money to which he hasn't title, it is not taxable. I have been fortunate enough to read the brief of both the government and defense in that case.

(Argument on the law.)

I think that is a question which is so important to both the income tax and internal revenue and the criminal code, that it ought to be decided by not only the Circuit Court of Appeals but by some higher authority. I think it definitely in this case presents a situation which is a very solid question on appeal. I don't say it will be decided favorably to this defendant nor need I say so on an application for bail.

There are other grounds we have urged upon your Honor in support of the motion. These with respect to the evidence I do not urge because they present fact questions.

(11) With respect to your Honor's refusal to charge requests, I think that the hypothesis I advanced at that time presents a substantial question on appeal as well as the rejection or admission of the testimony I referred to before. Under those circumstances we feel that the defendant is entitled to release on bail pending appeal.

The Court: I conceive the situation to be one which is purely a question of fact so far as your argument is concerned as to whether, if the jury found this money was gained by extortion it is not taxable. It seems to me it would be a dangerously absurd refinement to say that gifts and receipts of moneys legitimately come by were taxable, that money acquired criminally is not.

The defendant may be remanded.

Motions on Behalf of Defendant and Application for Bail—Denied

Mr. Cohen: I have a further motion. I understand there will be no Circuit Court impanelled for about two weeks. In view of the seriousness of these questions I would like to apply for the continuance of bail until such time as the application may be heard and determined by the Circuit Court of Appeals.

The Court: There is nothing to stop you from applying to a member of the Circuit Court. I shall deny that motion and I don't know whether there was a disposition on the record of your original motion, which I denied. On your motion for entry of verdict of acquittal, (12) if I didn't deny it, I formally now deny it.

I deny your request for bail and I deny your motion that bail be continued for two weeks to permit you to appear before a panel of the Circuit Court, because I think you have the right to go before any individual Judge.

Mr. Tyne: Also the motion for new trial, your Honor.

The Court: Also the motion for new trial is denied.

Mr. Cohen: I have been asked to request whether or not your Honor will order the defendant held within this district until such time as we may make our application and have it disposed of by the Circuit?

The Court: Yes.

Mr. Tyne: Defendant is ordered remanded?

The Court: Yes.

Exhibits D-1a; D-1b; D-1c; D-1d; D-1e

[Five Post-Card Photographs]

(See opposite ☛)

Exhibit D-1a.

Front

Da Torren
Da Galen
Badden

D-1a
Arid

Back

Exhibit D-1b.

Front

POST CARD

CARTE POSTALE

Communication—Correspondance Address—Adresse

Hotel in Hamburg

U. S. DISTRICT COURT
FOR NEW JERSEY

OCT 11 1950

B.

D 1 ~~[illegible]~~ Gmd. 3.

Back

16

Exhibit D-1c.

Front

POST CARD

CARTE POSTALE

Communication—Correspondance Address—Adresse

STAMP HERE

200.000 people here

OCT 11 1950

D 1 C/

Encl 4

Back

Exhibit D-1d.

Front

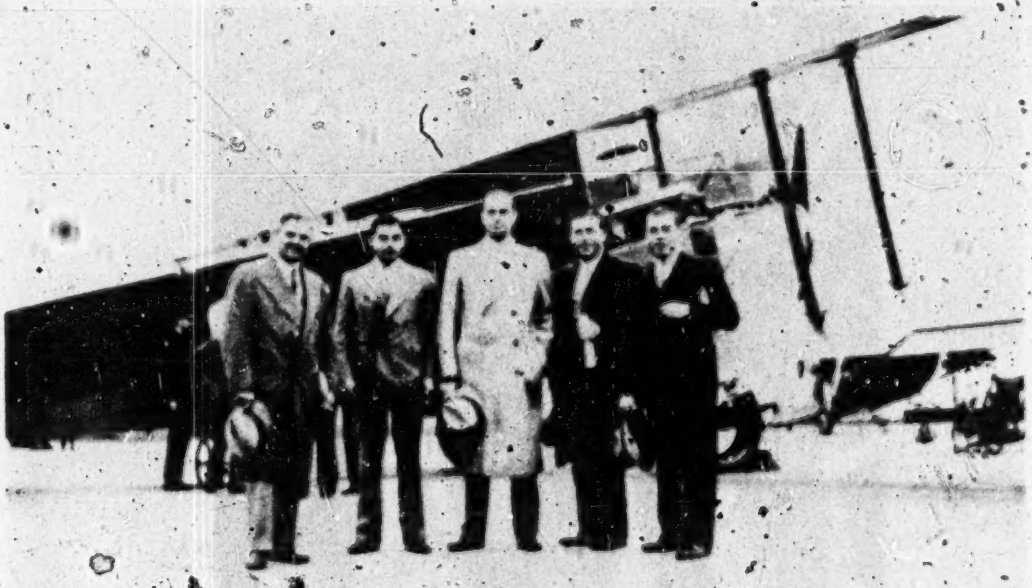
Paris to London nice trip

Rutkin - Louis Suiskind
Jno Reinfeld - Holtz

OCT 11 1950

D 1 D/ Ed 5

Back



1d

Exhibit D-1e.

963a

Front

D 1-E ~~Id~~ Encd

POST CARD

CARTE POSTALE

Communication—Correspondance Address—Adresse

STAMP

D 1

We only saw one race, the Grand Prix de Paris. Bet 1000 Francs ($40) on the winner at 12 to 1 and went home. Eddie asked Fannie Brice where you do straight betting. Nothing straight here said she.

L-R
LOUIS SUSKIND
ED SEAMON
JIM
JOE REINFELD

Back

1e

Exhibit D-7

[Reinfeld's Application and Permit to Carry a Pistol]

(See opposite ☛)

Form R. R. P. 2500

ORIGINAL PERMIT NO. 1827

965a (2-41)

Application for Renewal of Revolver Permit

18

NEWARK, N. J. Dec. 1, 1942

TO THE CHIEF OF POLICE, NEWARK, N. J:

Sir: I do hereby certify that I am the holder of a permit (Numbered 1827) to carry a revolver, which permit expires on December 31, 19 42.

I do further certify that the same conditions upon which I based my original application still exist.

Do you possess a revolver or other firearm? Yes

M'frs. Name & Address Colt Patent Firearms Co., Hartford, Conn.

M'frs. identification numbers, letters & marks Ser. #348359

Description, kind & type of firearm Revolver - Bankers Special

Caliber 38 Owner Myself

I do, therefore, respectfully apply for a renewal of said permit.

Respectfully submitted,

NAME Joseph H. Reinfeld

ADDRESS 24 Wilbur Ave.,
Newark, N.J.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.

Joseph H. Reinfeld, of full age, being duly sworn on his oath, according to law, deposes and says:

1. I am the person who signed the foregoing application for a renewal of a revolver permit.
2. The same conditions upon which I based my original application still exist, and the nature of the duties performed by me are such that I am required to carry a revolver.

Subscribed and Sworn to before me
this 1st day of Dec. 19

John Carmine
Notary Public, New Jersey.

Joseph H. Reinfeld

NEWARK, N. J. 19

To the Justice of the Supreme Court.

I do hereby recommend that the aforementioned application for a renewal of revolver permit be granted said renewal to expire December 31, 19

Police Commissioner.

TO THE CLERK OF THE COUNTY OF ESSEX:

The aforementioned Revolver Permit is hereby renewed; said renewal to expire December 31, 19 43.

Dated: Newark, N. J., Jan 20, 19 43

Judge, Essex Co., Court Common Pleas.

Front

965a (Pt. 2)
Back

RENEWAL - 1943

THIS APPLICATION MUST BE MADE IN DUPLICATE

City No. 18

APPLICATION FOR RENEWAL OF REVOLVER PERMIT

NUMBER 1827

JOSEPH H. REINFELD
Name of Permit Holder

Date of Application Dec. 1, 1942

Renewal expires Dec. 31, 1943

Filed ..... 19 .....
Essex County Clerk's Office

County Clerk.

Filed ..... 19 .....

Police Commissioner.

DEPARTMENT OF PUBLIC SAFETY
POLICE DIVISION
NEWARK, N. J.

This person has the following arrest record in this department.

Signed H. Templeton
Chief Identification Clerk Record Bureau

Date 12/30/42 19 .... Per .....

8-24-1918 Newark, N. J., Viol. Sect. 640, City Ordinance (Noise) On 8-24-18, Act. Judge Oehring, 2-1 C.P., Fined $5.00 (Paid)

3-3-1920 Newark, N. J., Vio National Prohibition Act (Conspiracy) Fined $200.00

3-17-1925 Newark, N. J., Murder, Case Dismissed April, 1925, term Grand Jury

FILED
JAN 20

Exhibit D-8

[General Release]

(See opposite ☛)

Exhibit D-8.

Front

GENERAL RELEASE

KNOW ALL MEN, That we, the undersigned, for and in consideration of the sum of One ($1.00) Dollar, lawful money of the United States of America, and other good and valuable consideration to us in hand paid by Joseph H. Reinfeld, Samuel Reinfeld, Saul Reinfeld, Louis Holtz, Isadore Holtz, Harold C. Levin, Browne-Vintners Co., Inc., a New York corporation (in liquidation), and Cointreau, Ltd., a New Jersey corporation, the receipt whereof is hereby acknowledged, have remised, released and forever discharged, and by these Presents do for ourselves, our heirs, executors and administrators, remise, release and forever discharge the said Joseph H. Reinfeld, Samuel Reinfeld, Saul Reinfeld, Louis Holtz, Isadore Holtz, Harold C. Levin, Browne-Vintners Co., Inc., and Cointreau, Ltd. their heirs, executors, administrators, successors and assigns of and from all, and all manner of, action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, that against the said Joseph H. Reinfeld, Samuel Reinfeld, Saul Reinfeld, Louis Holtz, Isadore Holtz, Harold C. Levin, Browne-Vintners Co., Inc., and Cointreau, Ltd., we, ever had, now have, or that our heirs, executors or administrators hereafter can or may have, by reason of any matter, cause or thing whatsoever from the beginning of the world up to and including the day of the date of this release.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this 11th day of May, 1943.

In presence of

[illegible] (LS)

[illegible] (LS)

[illegible] (LS)

[illegible]

Exhibit D-8. Continued. 967a

Back.

GENERAL RELEASE

To

Joseph H. Reinfeld,
et als.

DATED: May 1943

LAW OFFICES
DAVID N. POPIK
744 BROAD STREET
NEWARK N J

88

Exhibit D-9

[PHOTOSTAT]

(See opposite ☛)

Orig.	$469,343.40
J. R.	265,328.30
A.	217,369.20
J. D.	39,799.25
M. L.	7,959.85
	$1,000,000.00

J. R. COLLECT

S. Ltz.	12% of	$265,328.30	$31,839.39	
S. Ltz.	4% of	265,328.30	10,613.13	
			$42,452.52	
S. Ltz. Credit	4% of	30,656.60	1,226.26	$41,226.26
Jim	12% of	265,328.30		31,839.39
Lou S.	6% of	265,328.30		15,919.69
Costy	3% of	265,328.30		7,959.85
K.	4% of	30,656.60		1,226.26
J. F.	4% of	30,656.60		1,226.26
Marty S.	4% of	30,656.60		1,226.26
J. R.	55% of	265,328.30	145,930.56	
	10% of	265,328.30	21,226.26	
			$167,156.82	
J. R. Credit	8% of	30,656.60	2,452.52	$164,704.30
J. D.			$ 39,799.25	
J. D. Top			601.31	40,400.56
M. L.			7,959.85	
M. L. Top			460.26	6,426.11

Sam. Ltz.	4% of	$469,343.40	$18,773.74		
Sam. Ltz.	Cash		41,226.26	$60,000.00	
Jim R.	6% of	469,343.40	28,160.61		
Jim R.	Cash		31,839.39	60,000.00	
Lou S.	3% of	469,343.40	14,080.31		
Lou S.	Cash		15,919.69	30,000.00	
Costy	1 1/2% of	469,343.40	7,040.15		
Costy	Cash		7,959.85	15,000.00	
K.	4% of	469,343.40	18,773.74		
K.	Cash		1,226.26	20,000.00	
J. F.	4% of	469,343.40	18,773.74		
J. F.	Cash		1,226.26	20,000.00	
M. S.	4% of	469,343.40	18,773.74		
M. S.	Cash		1,226.26	20,000.00	
J. R.	23 1/2% of	469,343.40	110,295.70		
J. R.	Cash		169,704.30	275,000.00	
				$500,000.00	

JR	45%
Jamie	6
James	12
Ed Co	3
K Co	32 1/2
K Co	1 1/2 Chicks

Exhibit D-10

Law Offices
DAVID N. POPIK
744 Broad Street
Newark, N. J.

Telephone MArket 2-5353

May 10th, 1943

Samuel I. Kessler, Esq.,
9 Clinton Street,
Newark, N. J.

Dear Sam:

I am enclosing herewith for your approval copy of a general release, which I intend to use in connection with our closing, which I am trying to arrange for tomorrow.

After you have had an opportunity to read it, please call my office.

Sincerely yours,

s/ Dave
DAVID N. POPIK

DNP:BWS
Encl

Exhibit D-11

[PHOTOSTAT]

(See opposite ☛)

977a 1

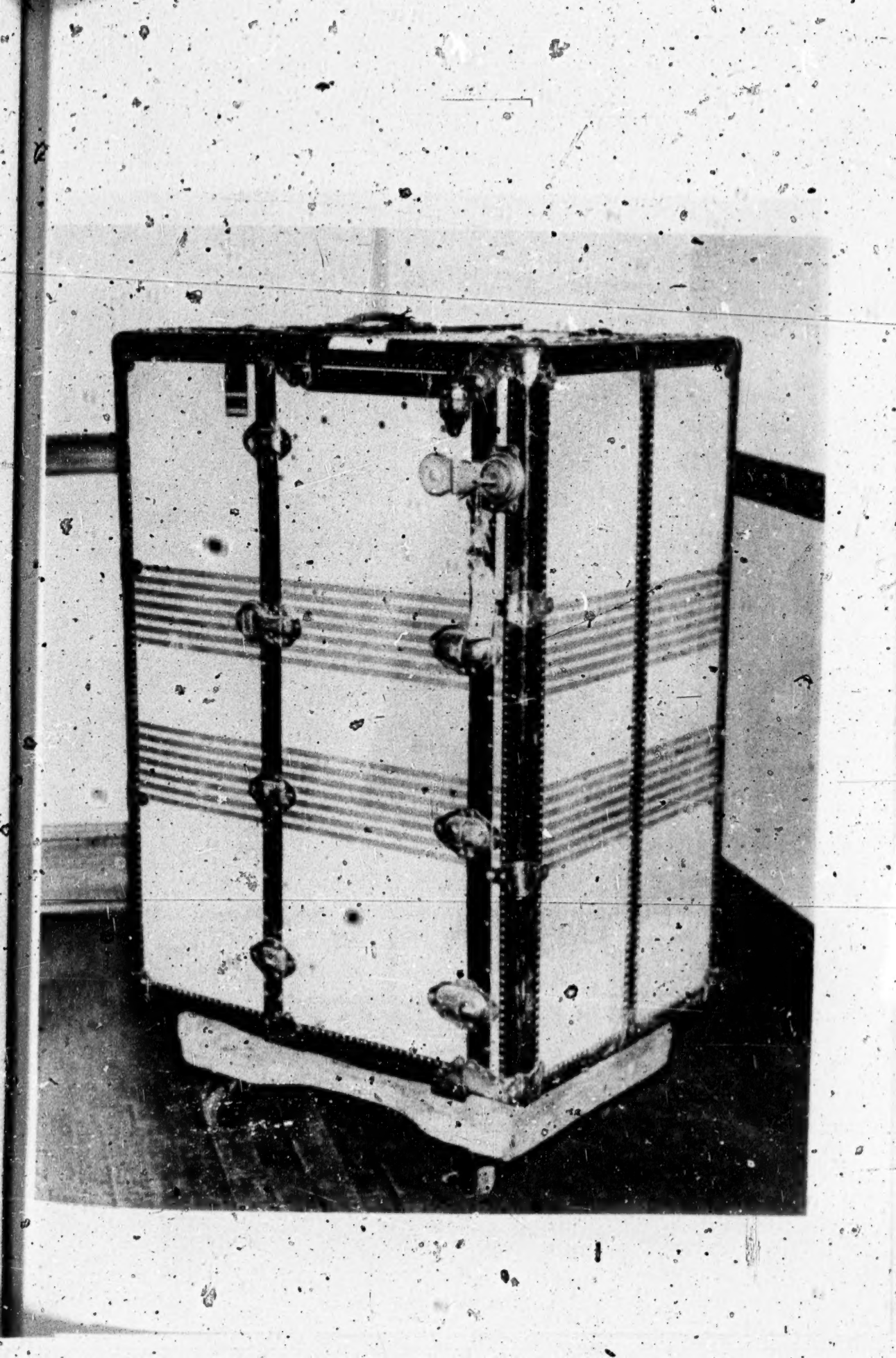
Exhibit D-11

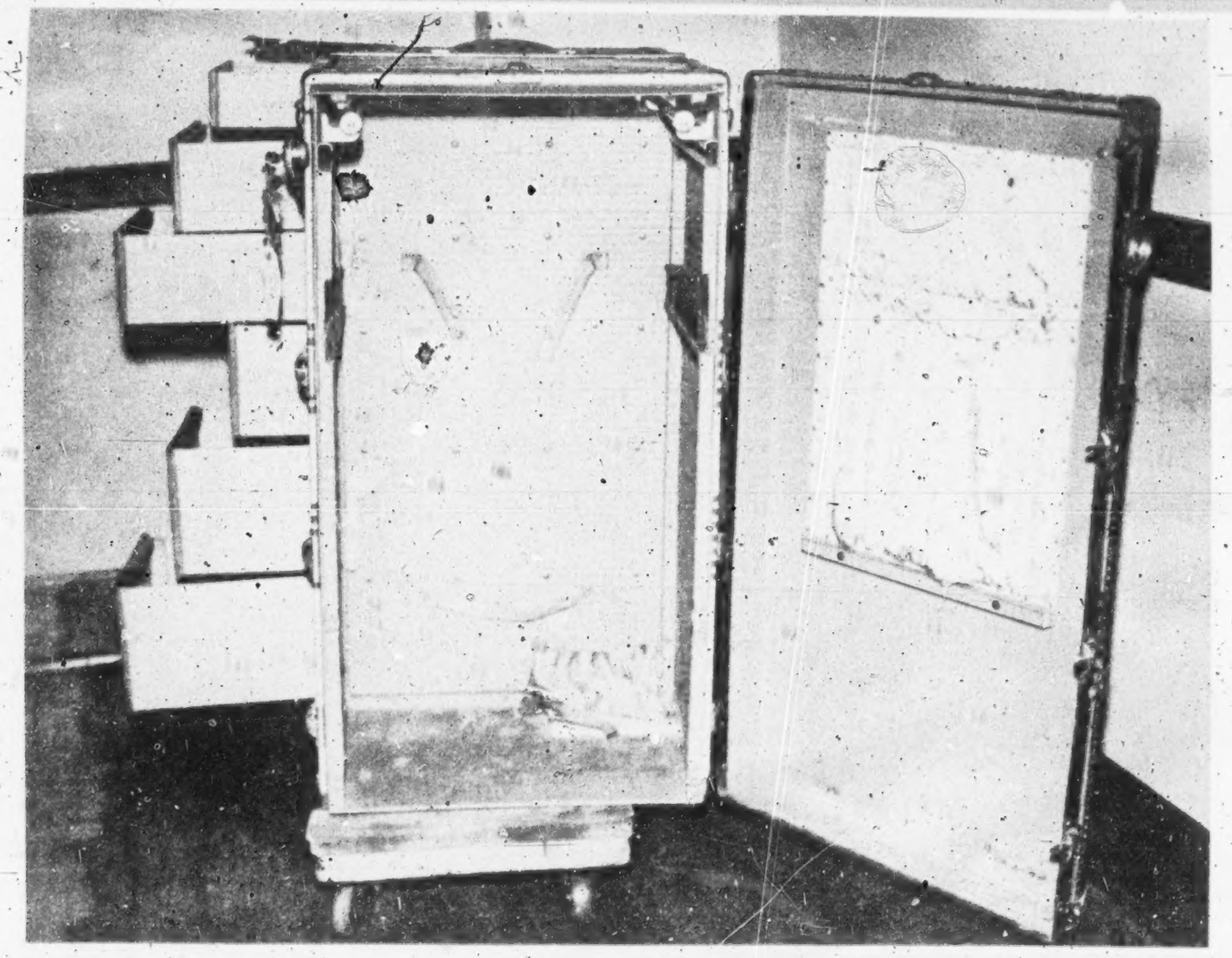
PROFIT ON $100,000.00 INVESTMENT		164,559.10
CASH COMING		75,000.00
TOTAL PROFIT & CASH COMING		239,559.10
TAXES		30,000.00
EXPENSES ON SETTLEMENT OF BUSINESS		3,300.00
REMAINING AFTER DEDUCTING TAXES & EXPENSES		206,259.10
ADVANCE MAY 20, 1940	5,000.00	
ADVANCE FEB. 10, 1941	36,000.00	
" Oct. 24, 1941	10,000.00	
" June 4, 1942	2,000.00	
" JUNE 15, 1942	2,000.00	
TOTAL ADVANCES THUS FAR		55,000.00
REMAINING AFTER DEDUCTING ADVANCES		151,259.10
LATE ADVANCE NOV. 20, 1942	35,000.00	
LATE ADVANCE NOV. 25, 1942	15,000.00	
LATE ADVANCE DEC. 4, 1942	20,000.00	
TOTAL LATE ADVANCES		70,000.00
REMAINING AFTER DEDUCTING LATE ADVANCES		81,259.10

Exhibit D-13

[PHOTOGRAPHS OF TRUNK]

(See opposite ☛)





9730

Exhibit D-14

[ANALYSES OF EXHIBITS D-9 AND D-11]

(See opposite ☛)

ANALYSIS OF EXHIBIT D-9

SAM LTZ 4% of 469343.40
SAM LTZ CASH

JIM R. 4% of 469343.40
JIM R. CASH

LOU S. 3% of 469,343.40
LOU S. CASH

COSTY 12% of 469,343.40
COSTY CASH

K. 4% of 469343.40
K. CASH

J.F. 4% of 469.343.40
J.F. CASH

M.S. 4% of 469343.40
M.S. CASH

J.R. 23½% of 469343.40
J.R. CASH

12% 60,000

12% 60,000.

6% 30,000

3% 15,000.

4% 20,000.

4% 20,000.

4% 20,000.

55% 275,000.
100% 500,000.

18773.74 18773.74
41122.36 41122.36

28160.41 28160.41
31834.34 31834.34

1408a31 14080.31
15919.69 15919.69

7040.15 7040.15
7959.85 7959.85

18773.74 18773.74
1226.26 1226.26

18773.74 18773.74
1226.26 1226.26

18773.74 18773.74
1226.26 1226.26

110.295.30 110.295.70
164704.30 164704.30

234671.73

265328.27

ORIG. 469343.40
J.R. 265.328.30
A. 217.569.20
J.D. 39.799.25
M.L. 7.959.85
1.000.000.00

265328.30

EQUALS 50% of "ORIG." AMOUNT OF 469343.40

ANALYSIS OF PROCEEDS OF INVESTMENT PER EXHIBIT D-11

	ON $ 100.000. (PER EXHIBIT D-11)	ON $100000. (after eliminating Tax deduction & giving effect to $25.000. "Debt")	ON EACH $ 1000.	ON $ 160.000.
PROFIT ON ---- INVESTMENT	164.559.10	164.559.10	1.645.59	263.294.56
CASH - COMING	75.000.00	100.000.00	1.000.00	160.000.00
TOTAL PROFIT & CASH COMING	239.559.10	264.559.10	2.645.59	423.294.56
TAXES	30.000.00			
EXPENSES ON SETTLEMENT OF BUS.	30.000.00	3.300.00	33.00	5.280.00
REMAINING AFTER DEDUCTIONS	209.559.10	261.259.10	2612.59	418.014.56
ADVANCE MAY 20. 1940	5.000.00	5.000.00		5.000.00
FEB 10. 1941	36.000.00	36.000.00		36.000.00
OCT 24. 1941	10.000.00	10.000.00		10.000.00
JUN 4. 1942	2.000.00	2.000.00		2.000.00
JUN 15. 1942	2.000.00	2.000.00		2.000.00
TOTAL ADVANCES THUS FAR	55.000.00	55.000.00		55.000.00
REMAINING AFTER DEDUCT'G ADVANCES	154.559.10	206.259.10		363.014.56
LATE ADVANCE - NOV 20, 1942	35.000.00	35.000.00		35.000.00
- NOV 25, 1942	15.000.00	15.000.00		15.000.00
- DEC 4. 1942	20.000.00	20.000.00		20.000.00
TOTAL LATE ADVANCES	70.000.00	70.000.00		70.000.00
REMAINING AFTER DEDUCT'G LATE ADVANCES	84.559.10	136.259.10		293.014.56
DEDUCT "DEBT" DUE		25.000.00		25.000.00
BALANCE		111.259.10		268.014.56

Notice of Appeal

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

On Indictment—No. 134-50

UNITED STATES OF AMERICA

vs.

JAMES RUTKIN

APPELLANT: James Rutkin, 201 Midland Place, Newark, N. J.

APPELLANT'S ATTORNEY: Jack L. Cohen, 850 Broad St., Newark, N. J.

OFFENSE: Evasion of income tax in violation of Title 26, U. S. Code, Section 145 B.

On October 27, 1950. Appellant was sentenced to imprisonment for a term of 4 years, and to pay a fine of $10,000.00.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Third Circuit from the above-stated judgment.

JAMES RUTKIN

Dated: October 27, 1950.

[fol. 977] [Stamp:] Received & Filed Nov. 1, 1950. Ida O. Creskoff, Clerk.

U. S. Circuit Court of Appeals, Third Circuit

On Indictment No. Cr. 134-50

United States of America

vs.

James Rutkin

Petition

To the Honorable John Biggs, Jr., Judge of the U. S. Court of Appeals:

The petition of James Rutkin, defendant in the above matter respectfully shows:

1. Petitioner resides at 201 Midland Place, Newark, New Jersey.

2. On March 14, 1950, petitioner was indicted for a violation of Title 26, U. S. Code, Section 145 B.

3. After a trial before a jury and the Honorable Thomas F. Meaney, Judge of the United States District Court of New Jersey, the jury returned a finding of guilty as to the said indictment on October 23, 1950.

4. On October 27, 1950, petitioner was sentenced by the Honorable Thomas F. Meaney to imprisonment for a term of 4 years, and to pay a fine of $10,000.00.

5. On October 27, 1950, petitioner appealed the aforesaid conviction to the United States Circuit Court of Appeals for the Third Circuit, by filing a Notice of Appeal with the Clerk of the United States District Court for the District of New Jersey. Petitioner is advised and believes that on October 28, 1950, a copy of the said Notice of Appeal was filed with the Clerk of the United States Court of Appeals for the Third Circuit at Philadelphia, Pennsylvania.

[fol. 978] 6. Pending trial of the case and until the time of sentence, petitioner had been at liberty on bail in the sum of $15,000.00. Immediately after the imposition of sentence, petitioner applied to the sentencing Judge for release on bail pending the appeal. This application was denied. Peti-

tioner further applied for release on bail pending such time as petitioner's attorneys might apply to this Court for release on bail pending the appeal. This application was likewise denied.

7. Petitioner shows and alleges that the instant case involves substantial questions of law which should be determined by the Appellate Court in that

(1) the trial Court made many errors in the admission and rejection of testimony during the course of the trial.

(2) the trial Court incorporated in its charge comments on the evidence and collateral remarks, the result of which were to inflame and bias the jury, and were in other respects extremely prejudicial to the defendant.

(3) the verdict of the jury was contrary to and unsupported by the evidence and was clearly the result of bias, prejudice and passion.

(4) the disposition of this case on appeal will of necessity involve a determination by the Appellate Court as to whether or not money obtained by extortion is taxable in the light of the case of United States vs. Wilcox, 66 Supreme Court, Page 546. Petitioner is advised and believes that within the rationale of the decision in that case as the same should be applied to the facts in the instant case, the Court erred in refusing petitioner's motions to direct a judgment [fol. 979] of acquittal. A determination of this question is important for the clarification of the administration of the Internal Revenue Laws of the United States and of the United States Criminal Code.

(5) The trial Court erred in refusing to grant petitioner's requests to charge.

(6) the trial Court erred in refusing to grant petitioner's motions for judgment of acquittal both at the conclusion of the government's case, and at the conclusion of the petitioner's case.

(7) the trial Court erred in refusing to grant petitioner's motions for judgment of acquittal, or new trial made after the verdict of the jury.

8. All of the questions of law which petitioner sets out in the foregoing paragraph of this petition were clearly and with timeliness urged upon the trial Court.

Wherefore, petitioner prays that pending the appeal he be admitted to bail in such sum as this Court may in its

discretion fix, and that he have such other relief as may be just in the premises.

Jack L. Cohen, Esq., Attorney for Petitioner. ——, of Counsel.

[fol. 980] State of New Jersey,
County of Essex, ss.

James Rutkin, being duly sworn on his oath, according to law, deposes and says:

He is the petitioner in the foregoing petition; that he has read the same, and the facts therein stated are true to the best of his knowledge, information and belief.

James Rutkin.

Sworn and subscribed to before me this 28th day of October, 1950. George F. Corrigan, Jr., an Attorney at Law of New Jersey.

[fol. 981] [Endorsed:] U. S. Circuit Court of Appeals, Third Circuit. United States of America vs. James Rutkin. Petition. Jack L. Cohen, Esq., 850 Broad St., Newark, N. J.

[fol. 982] United States Court of Appeals for the Third Circuit

Present: Biggs, Chief Judge, and Goodrich, Circuit Judge.

And Now, to-wit, this 30th day of October, 1950, it is

Ordered that a session of the United States Court of Appeals for the Third Circuit be held in the United States Court House and Post Office at Wilmington, Delaware, at 10:30 o'clock in the forenoon on October 30, 1950 in connection with the application for bail in the case of United States v. Rutkin; and it is

Further Ordered that Edward G. Pollard, Esquire, be and he is hereby deputized as deputy clerk of the United States Court of Appeals for the Third Circuit to serve on this day only without compensation.

By the Court, Biggs, Chief Judge.

(Received & Filed Nov. 1, 1950. Ida O. Creskoff, Clerk.)

[fol. 983] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA

v.

JAMES RUTKIN

Present: Biggs, Chief Judge, and Goodrich, Circuit Judge.

The Court having heard the argument of counsel for the defendant-appellant and it having been shown to the Court that there is substantial reason for admitting defendant-appellant to bail pending appeal, and application having been made for bail to the District Court Judge who tried the cause, and the same having been denied, it is, on this 30th day of October, 1950,

Ordered that the defendant-appellant be admitted to bail pending his appeal in the sum of $50,000, the bond to be approved by the Clerk of the United States District Court for the District of New Jersey, on the condition that he pay the fine into the Registry of the District Court for the District of New Jersey pursuant to Rule 38 (3) of the Rules of Criminal Procedure.

For the Court, Biggs, Chief Judge.

Order Admitting Appellant to Bail in $50,000.

Received & Filed Nov. 1, 1950. Ida O. Creskoff, Clerk.

[fol. 984] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA

v.

JAMES RUTKIN

ORDER

Present: Biggs, Chief Judge, and Goodrich, Circuit Judge.

And Now, to wit, this 30th day of October, 1950, it is

Ordered that the appellant file his brief on or before December 1, 1950, and that the appellee file its brief on or

before January 2, 1951; that the appellant file his reply brief on or before January 12, 1951; and that the above entitled case be set down for argument in the week commencing January 15, 1951.

By the Court, (S.) Biggs, Chief Judge.

(Received & Filed Nov. 1, 1950. Ida O. Creskoff, Clerk.)

[fol. 985] [Stamp:] Received & Filed Nov. 9, 1950. Ida O. Creskoff, Clerk

U. S. Court of Appeals for the Third Circuit

No. 10,320

United States of America

vs.

James Rutkin, Defendant-Appellant

Notice of Motion

To Alfred E. Modarelli, U. S. Attorney, Federal Bldg., Newark, N. J.:

Sir:

Please Take Notice that on Monday, November 13, 1950, at 10:30 A. M., or as soon thereafter as counsel may be heard, I shall apply to the U. S. Court of Appeals for the Third Circuit, at the U. S. Court House, 9th and Chestnut Streets, Philadelphia, Pennsylvania, for an Order directing that the recorded transcription of the charge of the trial court made at the time of trial of the above matter be certified as part of the transcript of the proceedings below and that the defendant-appellant have leave to reproduce the said recording before the Appellate Court at the time of the argument of the appeal.

Please Take Further Notice that annexed hereto, and made part hereof, is an affidavit upon which the defendant-appellant will rely on the return day of this Notice of Motion.

Jack L. Cohen, Esq., Attorney for Defendant-Appellant.

[fol. 986] STATE OF NEW JERSEY,
County of Essex, ss:

James Rutkin, being duly sworn on his oath, according to law, deposes and says:

1. I am the defendant-appellant in the above matter.

2. In addition to the stenographic transcript made of the proceedings below, a mechanical recording of the said proceedings was also made by the court stenographer.

3. Affiant further shows that the said mechanical transcription was made with the knowledge and consent of the trial court.

4. One of the points upon which my appeal will rest is that the trial court in its charge to the jury made certain comments upon the evidence and certain collateral remarks which were extremely prejudicial in that the jury was thereby induced to return a verdict which was the result of bias, passion and prejudice.

5. Appellant's exception to that portion of the charge is not limited to its contents, but appellant will charge at the time of the appeal that these alleged prejudicial remarks were delivered with a quality of tonal inflection that was in itself prejudicial to the defendant.

6. Appellant shows that a reading of the stenographic transcript must of necessity fail to adequately provide a basis upon which this Court can determine whether or not appellant's exception in this respect is well taken.

7. A basis for such decision can in the opinion of the ap-
[fol. 987] pellant best be afforded by a hearing of the transcription aforesaid.

James Rutkin.

Sworn and subscribed to before me this 7th day of November, 1950. Ann Ventre, a Notary Public of New Jersey.

[fol. 988] [Endorsed:] U. S. Court of Appeals for the Third Circuit. United States of America vs. James Rutkin, Defendant-Appellant. Notice of Motion. Service of the within Notice of Motion is acknowledged this — day of November, 1950. Alfred E. Modarelli, U. S. Attorney. Jack L. Cohen, Esq., 850 Broad St., Newark, N. J.

[fol. 989] [Stamp:] Received & Filed Nov. 9, 1950. Ida O. Creskoff, Clerk.

U. S. Court of Appeals for the Third Circuit

United States of America,

vs.

James Rutkin, Defendant-Appellant

Notice of Motion

To: Alfred E. Modarelli,
U. S. Attorney
Federal Bldg,
Newark, N. J.

Sir:

Please take notice that on Monday, November 13, 1950, at 10:30 A. M., or as soon thereafter as counsel may be heard, I shall apply to the U. S. Court of Appeals for the Third Circuit, at the U. S. Court House, 9th and Chestnut Streets, Philadelphia, Pennsylvania, for an Order granting leave to the appellant to depart from the geographical limits of the District of New Jersey, pending the appeal.

Please take further notice that annexed hereto and made part hereof, is an affidavit upon which the defendant-appellant will rely on the return day of this Notice of Motion.

Jack L. Cohen, Esq., Attorney for Defendant-Appellant.

[fol. 990] State of New Jersey,
County of Essex, ss.

James Rutkin, being duly sworn on his oath, according to law, deposes and says:

1. I am the defendant-appellant in the above matter.

2. I am the plaintiff in a civil suit which is pending in the U. S. District Court for the Southern District of New Jersey.

3. In that suit I am represented by the firm of Delafield, Hawkins & Woods of New York City, N. Y.

4. I am advised that the suit will be reached for trial in March or April of 1951.

5. The said suit involves a very substantial sum of money. At the trial I will be obliged to produce many witnesses from all parts of the country to substantiate my claims. In order to successfully prosecute this suit, it becomes necessary for me to make recurrent visits to the office of my attorneys in New York City, and to confer with witnesses in New York City or its environs.

6. There are several witnesses who presently reside in the State of Florida, whose testimonies will be very material. It is imperative that I go to Florida to see these witnesses and confer with them.

James Rutkin.

Sworn and subscribed to before me this 7th day of November, 1950. Ann Ventre, a Notary Public of N. J.

[fol. 991] [Endorsed:] U. S. Court of Appeals for the Third Circuit. United States of America vs. James Rutkin, Defendant-Appellant. Notice of Motion. Service of the within Notice of Motion is acknowledged this — day of November, 1950. Alfred E. Modarelli, U. S. Attorney. Jack L. Cohen, Esq., 850 Broad St., Newark, N. J.

[fol. 992] [Stamp:] Received & Filed Nov. 10, 1950. Ida O. Creskoff, Clerk.

U. S. Court of Appeals for the Third Circuit

No. 10,320

United States of America,

vs.

James Rutkin, Defendant-Appellant

Notice of Motion

To: Alfred E. Modarelli,
U. S. Attorney
Federal Bldg.
Newark, N. J.

Dear Sir:

Please take notice that on Monday, November, 13, 1950, at 10:30 A. M., or as soon thereafter as counsel may be

heard, I shall apply to the U. S. Court of Appeals for the Third Circuit, at the U. S. Court House, 9th and Chestnut Avenues, Philadelphia, Pennsylvania, for an Order extending defendant-appellant's time for filing briefs.

Jack L. Cohen, Attorney for Defendant-Appellant.

[fol. 993] [Endorsed:] U. S. Court of Appeals for the Third Circuit. United States of America vs. James Rutkin, Defendant-Appellant. Notice of Motion. Service of the within Notice of Motion is acknowledged this — day of November, 1950. Alfred E. Modarelli, U. S. Attorney. Jack L. Cohen, Esq., 850 Broad St., Newark, N. J.

[fol. 994] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA,

vs.

JAMES RUTKIN, Appellant

Present: Maris, McLaughlin and Staley, Circuit Judges

Upon consideration of the motion by appellant for an order directing that the recorded transcription of the charge of the trial court be certified as part of the record on appeal and that appellant have leave to reproduce the said recording before the Court of Appeals at the time of argument, and after hearing on the motion.

It is ordered that the motion be, and it is hereby denied.

By the Court, Maris, Circuit Judge.

November 17, 1950.

(Received & Filed Nov. 17, 1950. Ida O. Creskoff, Clerk.)

[fol. 995] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA

vs.

JAMES RUTKIN, Appellant

Present: Maris, McLaughlin and Staley, Circuit Judges.

Upon consideration of the motion by counsel for appellant for an order granting leave to the appellant to depart from the geographical limits of the District of New Jersey pending appeal in the above-entitled case, and after hearing on the motion,

It is Ordered that the motion be, and it is hereby dismissed.

By the Court, Maris, Circuit Judge.

November 17, 1950.

(Received & Filed Nov. 17, 1950. Ida O. Creskoff, Clerk.)

[fol. 996] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA

vs.

JAMES RUTKIN, Appellant

Present: Maris, McLaughlin and Staley, Circuit Judges.

Upon consideration of the motion by counsel for appellant to extend time for filing appellant's brief and appendix in the above-entitled case, and there being no opposition to the motion,

It is Ordered that the time for filing appellant's brief and appendix be, and it is hereby extended to January 15,

1951, and the time for filing appellee's brief until twenty days thereafter; the time for oral argument to be fixed by the court.

By the Court, Maris, Circuit Judge.

November 17, 1950.

(Received & Filed Nov. 17, 1950. Ida O. Creskoff, Clerk.)

[fol. 997] [Stamp:] Received & Filed Jan. 9, 1951. Ida O. Creskoff, Clerk

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA, Appellee,

vs.

JAMES RUTKIN, Appellant

STIPULATION

It is hereby stipulated by and between counsel for the Appellant and Appellee in the above captioned matter that Appellant's time for filing brief be extended for an additional period of one week to January 22, 1951, and it is further

Stipulated that the Appellee have thirty days thereafter for filing answering brief.

Jack L. Cohen, Attorney for Appellant; Alfred E. Modarelli, U. S. Attorney for the District of New Jersey, Attorney for Appellee.

So Ordered. Maris, J.

Jan. 9, 1951.

[fol. 998] [Endorsed:] United States Court of Appeals for the Third Circuit. No. 10,320. United States of America, Appellee, vs. James Rutkin, Appellant. Stipulation. Jack L. Cohen, Esq., 850 Broad St., Newark, N. J

[fol. 999] U. S. Court of Appeals for the Third Circuit

No. 10,320

United States of America

vs.

James Rutkin, Defendant-Appellant

Petition

To the Honorable Judges of the U. S. Court of Appeals for the Third Circuit:

The petition of Jack L. Cohen, respectfully shows:

1. I am the attorney of record in the above matter, and am actually entrusted with the conduct of the suit.

2. In the preparation of appellant's brief, I have found it imperative to expend some 28 pages in matter extraneous of the legal argument. Most of these 28 pages is consummed by a statement of the evidence. This rather lengthy statement of evidence is included in the brief because in my opinion it will be of inestimable value to the Court in considering the legal arguments based upon the evidence. I feel that to shorten this statement of facts would be to fall short of my duty toward the Court.

3. The number of pages remaining to appellant within the 50 page rule are inadequate to comprehensively and properly present the legal points involved.

Wherefore, permission is prayed to enlarge appellant's brief to 65 pages.

Jack L. Cohen, Petitioner.

Approved. Jan. 23, 1951. Herbert F. Goodrich, Circuit Judge.

(Received and Filed Jan. 23, 1951. Ida O. Creskoff, Clerk.)

[fol. 1000] STATE OF NEW JERSEY:
County of Essex, ss:

Jack L. Cohen, being duly sworn on his oath, according to law, deposes and says:

I have read the foregoing, and the matter and facts set forth therein are true to the best of my knowledge, information and belief.

Jack L. Cohen.

Sworn and subscribed to before me this 15th day of January, 1951. Ann Ventre, a Notary Public of New Jersey.

[fol. 1001] [Endorsed:] U. S. Court of Appeals for the Third Circuit. No. 10,320. United States of America vs. James Rutkin, Defendant-Appellant. Petition. Jack L. Cohen, Esq., 850 Broad St., Newark, N. J.

[fol. 1002] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA, Appellee,

vs.

JAMES RUTKIN, Appellant.

STIPULATION

It is hereby stipulated by and between counsel for the Appellant and Appellee in the above captioned matter that the time for filing the brief of the Appellee be extended until March 15, 1951.

Jack L. Cohen, Attorney for Appellant; Grover C. Richman, Jr., United States Attorney for the District of New Jersey, Attorney for Appellee.

Feb. 19 1951. So Ordered. Biggs, Ch. J.

(Received & Filed Feb. 19, 1951, Ida O. Creskoff, Clerk).

[fol. 1003] [Endorsed:] #10,320. United States Court of Appeals for the Third Circuit. United States of America,

Appellee, vs. James Rutkin, Appellant. Stipulation. Grover C. Richman, Jr., United States Attorney, District of New Jersey, Attorney for Appellee, Newark, New Jersey.

[fol. 1004] [Stamp:] Received & Filed Mar. 2, 1951, Ida O. Creskoff, Clerk.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA, Appellee,

vs.

JAMES RUTKIN, Appellant.

STIPULATION

It is hereby stipulated by and between counsel for the Appellant and Appellee in the above captioned matter that the time for filing the brief of the Appellee be extended from March 15, 1951, to April 15, 1951.

Jack L. Cohen, Attorney for Appellant; Grover C. Richman, Jr., United States Attorney for the District of New Jersey, Attorney for Appellee.

Dated: February 27, 1951.

March 2, 1951, Approved and the time for filing the brief of the appellee is hereby extended to April 15, 1951. Kirkpatrick, Circuit Judge.

[fol. 1005] [Endorsed:] United States Court of Appeals for the Third Circuit. United States of America, Appellee vs. James Rutkin, Appellant. No. 10,320. Stipulation. Grover C. Richman, Jr., United States Attorney, District of New Jersey, Attorney for Appellee, Newark, New Jersey.

[fol. 1006] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA, Appellee,

v.

JAMES RUTKIN, Appellant

On Appeal from the United States District Court for the District of New Jersey

Argued April 19, 1951

Before McLaughlin, Staley and Hastie, Circuit Judges

OPINION OF THE COURT—Filed May 23, 1951

By McLAUGHLIN, Circuit Judge.

Appellant was convicted of wilfully attempting to defeat and evade income and victory taxes.[1] He claims error by the trial court in the charge; in refusing to grant his motion for judgment of acquittal; and in connection with certain defense testimony.

[fol. 1007] Admittedly the sum of $250,000 was paid appellant by one Reinfeld. It was charged that the payment was made as the result of extortion. Appellant contended

[1] The indictment was founded on Section 145(b) of the Internal Revenue Code (26 U.S.C. 1946 ed.) which reads:

"Failure to collect and pay over tax, or attempt to defeat or evade tax. Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

that it was in final settlement of his asserted interest in Browne Vintners Company and therefore not reportable income by him because the corporation had already paid the capital gains tax on the money.

Reinfeld, the principal Government witness, testified that in 1926, during the prohibition era in this country, he and five other men were engaged in what he called a "High seas venture". This was a bootlegging operation which, as described, consisted in putting "a boat out there beyond 12-mile limit and different people come and buy whiskey. We only sold it to boats with foreign registration." The enterprise continued until 1932. In 1929 appellant came into the group. According to Reinfeld appellant did not contribute any money, "He just wanted to be a partner and we took him in." Asked the reason for so doing, Reinfeld said, "Well, we were afraid that we will get some interference and trouble." Later he gave as the reason "Because we were afraid of him" and repeated, "If we didn't take him in, we would have probably encountered some trouble."

Reinfeld testified that Rutkin was to receive 3% of the profits. A few months later, said Reinfeld, one of the other members of the organization "said he was going to quit because he had some arguments with Rutkin and he is afraid". The person did quit and gave his 3% share to Rutkin. In 1930 another group, consisting of Abner Zwillman, Joseph Stacher, Joseph Davis, Harry Davis and two others, purchased 50% of the enterprise. The undertaking was liquidated in 1933 and there was an accounting "as to what each partner had." Reinfeld stated that not only was nothing coming to Rutkin but that he was $35,000 overdrawn. He went on to say that in October 1933, the members of the original venture, with the exception of Rutkin, organized the Browne Vintners Company. In 1940 this [fol. 1008] was sold to Distillers Seagrams, Ltd. for seven and a half million dollars. Reinfeld's testimony is to the effect that Rutkin never had any interest in Browne Vintners. In 1936, Reinfeld stated that Rutkin asked him for $60,000 saying that he had 6% in the old company and that he still had 6% in Browne Vintners. Reinfeld testified that he answered, "Jim, you haven't got any money." Reinfeld said that, nevertheless, he gave him the $60,000 because he liked him and because Rutkin had convinced him that "He is going to be a success." At that time Rutkin signed a

document which, among other things, stated that he sold, signed and transferred to Reinfeld all of his "* * * right, title and interest in and to six percent of the issued and outstanding shares of capital stock, preferred and common, as of October 1, 1936, of Browne Vintners Co., Inc., a New York corporation, which represents any and all of such shares of capital stock in the said Browne Vintners Co. Inc., that I am entitled to." As to this, Reinfeld testified that Rutkin delivered it to him saying that "* * * he was paid out in full according to what claims he was making and I decided to recognize the claims and pay him out in full." In 1939, Reinfeld obtained a job for appellant with Browne Vintners at $15,000 a year. Rutkin stayed in this from six to eight months. During that period, as Reinfeld narrates it, Rutkin was in trouble in Boston and Reinfeld paid a lawyer named Kessler $2500 to help him or for helping him. Rutkin lost his job because of the Boston incident. About a year later Reinfeld saw him and gave him $2,000 or $3,000 to help him out.

Reinfeld said that in 1941 he gave appellant $10,000 on representations from the latter that he wished to purchase a tavern. Rutkin came back in a week or ten days for more money and at that time Reinfeld accused him of losing the $10,000 at the race track. "And that was our first trouble", says Reinfeld. There was an argument and Reinfeld told Rutkin that he was not going to give him another cent; that he was finished.

[fol. 1009] Reinfeld testified that in late October or early November 1942 Rutkin came to his office at Browne Vintners and started off by saying to him, "Where is my money? * * * You all done well, you all made a lot of money, what about me?" Reinfeld states he answered, "What do you want from me now that you threw all your money away? I haven't got your moneys." Rutkin insisted that Reinfeld give him $100,000 to pay his debts. There was an argument and Reinfeld said that Rutkin threatened him. Asked to tell about this in detail Reinfeld said, "Well, he had his hand in his pocket (indicating) and said that he would kill me if I did not give him the money in three days." Then, said Reinfeld, Rutkin "run out". Reinfeld stated that because of the incident he cancelled some appointment that he had and that he "was disgusted and discouraged with business and everything."

A couple of weeks later Rutkin again came in to Reinfeld's office, pushed the latter's secretary aside, and told Reinfeld "That if I don't give him that money that he is going to kill me." At that time Rutkin's demand went up to $150,000. Reinfeld was then asked, "What happened to you about this time, if anything?" He answered, "Well, I took sick."

A week or two later Rutkin came to Reinfeld's New York hotel room and saw him there. Reinfeld said he doesn't remember what Rutkin said but that it was "nothing bad". As Rutkin was leaving, Reinfeld followed him to the door and then, Reinfeld states that Rutkin "opened the door and started to walk out. He turned around and put a gun on me saying 'you get well and give me that money' ". At that time his figure was $200,000. He said, "Get me $200,000 or I will kill you." Sometime later, no specific date being fixed, at a time when Reinfeld states he was just getting well, his testimony is that Rutkin telephoned him, told him he was sick and started to apologize. Rutkin sounded over the telephone as though he were crying. Reinfeld says that he felt badly about this and agreed [fol. 1040] to go to Rutkin's hotel to see him. He did go to the hotel. He states that Rutkin told him that he had not slept since he had been up to see Reinfeld and that Rutkin said further that he must have been crazy or something. Reinfeld stated that he felt very sorry for Rutkin and said, "Let's forget the whole thing." Rutkin told him that he owed $4,000 for room rent and some other things and asked him for money. Reinfeld went out and obtained $5,000 and brought it back to him. Then, says Reinfeld, "* * * he told me if I could only give him another $5,000, how much he will think of me and all that. So I gave him another $5,000 at about 5 or 6 o'clock that afternoon."

Within a month, at the home of his brother-in-law, Reinfeld saw Rutkin again. Reinfeld's story is that he expected to there meet Zwillman's group and settle some disputed money matters with them. Rutkin was present with that group. The dispute with the group was quietly disposed of by agreeing to pay Zwillman $358,000. Then Kessler, the above referred to attorney, who was also present and who had handled the settlement of the dispute, asked about Rutkin. Reinfeld states that he asked what was Rutkin's claim and that Kessler replied that Reinfeld and Rutkin

had been friends a long while and told Reinfeld to "give him some money and get through with it". Reinfeld and Rutkin went into another room. Reinfeld states that Rutkin, at first, wanted half a million dollars and finally said that he would take $250,000. Reinfeld explains agreeing to this by saying, "I wanted to get rid of him anyway and get this off my mind because I carried it long enough. I was a sick man so I agreed." Reinfeld, his brother-in-law, and a third person, obtained both the settlement money for Zwillman and the cash for Rutkin from two safe deposit boxes and thereafter, the $250,000 was given Rutkin. Reinfeld said that the money was paid Rutkin because of Rutkin's above described course of conduct in which he had threatened to kill Reinfeld if the latter did not give him first, $100,000, then $150,000 and $200,000, then up to $500,000 and that [fol. 1011] the $250,000 was a compromise figure. The cash was actually paid over to Rutkin May 11, 1943 in exchange for a general release from him in favor of Reinfeld, the latter's brothers, Browne Vintners Co., Inc., and others.

Appellant's first point concerns that part of the charge when the District Judge instructed the jury that "If that money was extorted and was paid as the result of threat, then it was taxable income and Rutkin was under the duty of reporting that tax." It is urged that the Court failed to define the word "extortion" and that this is reversible error "* * * because the Court thereby failed in its duty to charge all the material elements of the offense."

Appellant cites as supporting his proposition, Screws v. United States, 325 U.S. 91, 107; United States v. Noble, 3 Cir., 155 F. 2d 315; United States v. Max, 3 Cir., 156 F. 2d 13; United States v. Levy, 3 Cir., 153 F. 2d 995. Those decisions are not in point on the particular problem. Extortion was not the offense for which appellant had been indicted and tried. It was merely the method allegedly employed by Rutkin to obtain the $250,000 and Reinfeld was explicit in his testimony that his payment to Rutkin "was the result of extortion" and in detailing the facts to show just what he meant by the use of that term. Appellant's story that he received the $250,000 to close out his share in the "High seas venture" which he contended had carried over into the Browne Vintners Company, was also in evidence and before the jury. The record fails to

reveal the slightest reason for inferring that the jury could have possibly misunderstood the clear language of the charge which precisely outlined the contradictory versions of the circumstances under which Rutkin received the money and their effect, if believed, upon the basic question at issue, namely, the guilt or innocence of the defendant under the indictment. Cf. Graham v. United States, Ct. App. D.C., 187 F. 2d 87, 90.

[fol. 1012] Appellant then advances to what is his main argument on this phase of the appeal. He asserts that the above quoted sentence from the charge is error because, under the circumstances as there outlined by the Court, the $250,000 received by Rutkin was not taxable and there was no necessity for showing its receipt in Rutkin's income tax report. The Supreme Court opinion in Commissioner v. Wilcox, 327 U.S. 404 is offered as upholding this theory. That decision held that embezzled money does not constitute taxable income to the embezzler. In Wilcox it was conceded that the sum in question had been embezzled by the defendant who had been convicted of that offense in a state court. The employer at all times held the embezzling employee-taxpayer liable to return the full amount of money he had wrongfully taken. All right, title and interest in the money rested with the employer. The Court held that a taxable gain under Section 22(a) of the Internal Revenue Code [2] is conditioned upon (1) the presence of a claim of right to the alleged gain; and (2) the absence of a definite

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[2] The pertinent part of Section 22(a) of the Internal Revenue Code is as follows:

"Section 22. Gross income

"(a) General definition. 'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived *from any source whatever.*" (Emphasis supplied.)

unconditional obligation to repay or return that which would otherwise constitute a gain.

As to the first condition, Reinfeld, according to the record, never denied the presence of a claim of right by Rutkin to some money. He had, some time previously, taken a release from Rutkin of the latter's alleged share in Browne Vintners when he gave him the $60,000. According to the evidence, the figure of $250,000 was, itself, a compromise of Rutkin's later demands. Rutkin at various times asked for [fol. 1013] different amounts ranging from $100,000 to half a million dollars but what he was seeking, according to his testimony, was what he called, "my money". He had expressly asserted that his interest in the "High seas venture" had carried over into Browne Vintners. And he gave a general release in favor of Reinfeld and Browne Vintners at the time he was given the $250,000. So he did receive the money with a "*semblance* of a bona fide claim of right" as the embezzler had not in Commissioner v. Wilcox, supra, p. 408. (Emphasis supplied).

The Wilcox decision is founded upon the opinion of Mr. Justice Brandeis in North American Oil Consolidated v. Burnet, 286 U.S. 417, which holds at p. 424: "If a taxpayer receives earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent." The recent Supreme Court opinion in United States v. Lewis, U.S. , March 26, 1951, speaking of the above holding in North American Oil Consolidated, said, "Nothing in this language permits an exception merely because a taxpayer is 'mistaken' as to the validity of his claim."

Regarding the second condition indicated by the Wilcox opinion as necessary to defeat a taxable gain, namely; the presence of a definite unconditional obligation by Rutkin to repay or return the $250,000 to Reinfeld, there is not the slightest hint in the record that Rutkin ever had or has such obligation. Reinfeld, after agreeing to give the $250,000 to Rutkin, did cause that sum to be turned over to him and took from him a general release. Reinfeld, the owner of the funds, participated in what he designates as their misappropriation by his own conscious acts. Obviously, as a result of that transaction, Rutkin at that time possessed

a colorable claim of title to the money. This has never since [fol. 1014] been challenged. Reinfeld has unmistakably considered the $250,000 to be Rutkin's property. He has left Rutkin in undisputed possession of it for the last eight years and has permitted the statute of limitations [3] to expire on whatever right he might have had to reclaim the money. Cf. Akers v. Scofield, 5 Cir., 167 F.2d 718, cert. denied 335 U.S. 823.

Therefore, under the Wilcox test, narrow as that test might possibly seem at this time and under current conditions, there was evidence from which the jury could find that the $250,000 was taxable income to Rutkin and should have been so reported by him. As the Wilcox opinion (408-409) points out, *"The question, rather, is whether the taxpayer in fact received a statutory gain, profit or benefit.* That the taxpayer's motive may have been reprehensible or the mode of receipt illegal has no bearing upon the application of Section 22(a). * * * *In each instance the taxability is determined from the circumstances surrounding the receipt and holding of the money."* (Emphasis supplied).

One other thought prior to leaving the Wilcox decision. The majority opinion there states that if the embezzler had used the embezzled money "* * * and obtained profits therefrom such profits might have been taxable regardless of the illegality involved." The opinion goes on to say at page 409: "Or had his employer condoned or forgiven any part of the unlawful appropriation, the taxpayer might have been subject to tax liability to that extent. But neither situation is present in this proceeding and we need not explore such possibilities." [4] Here, however, entirely aside

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[3] N.J.S.A. 2:24-1.

[4] Humphreys v. Commissioner, 7 Cir., 125 F.2d 340, is the closest decision to the instant facts which we have seen and supports the view here expressed. In that suit there was testimony to show that the taxpayer was generally regarded as a gangster and racketeer and that he had not been engaged in any legitimate business. The Board of Tax Appeals was affirmed in including in his taxable income $10,000 protection payments received by him from dry cleaners and $50,000 ransom money received by him from representatives of a kidnapped labor leader. The Supreme Court denied certiorari, 217 U.S. 637.

[fol. 1015] from the facts fulfilling both Wilcox conditions there exists the plain inference of condonation or forgiveness of all of the unlawful appropriation. This alone, under the above suggestion and having in mind all of the circumstances involved in this appeal, is enough to defeat the contention that as a matter of law appellant's conduct as charged did not constitute an indictable offense. See GCM 24945, CB 1946-2 p. 27.

The taxability of the $250,000 is in complete accord with the plain meaning of the statute. Section 22(a) reads that gross income includes "gains, profits and income derived from * * * the transactions of *any* business carried on for gain or profit, or gains or profits and income derived *from any source whatever.*" (Emphasis supplied). Prior to the 1916 amendment "any business" in the above clause read "any lawful business". As Mr. Justice Burton points out in his Wilcox dissent, page 411, "The 1916 amendment demonstrated an intent to include gains, profits and income from any unlawful business as well as from any lawful business." It is noteworthy that in that same dissent, page 414, appears the following: "If he [the taxpayer] had gained possession of the original funds by *extortion*, fraud, or usurious practices, those gains would be taxable to him under the general language of 22(a)." (Emphasis supplied).[5]

Appellant also contends that the Court's refusal to charge defense request 29 was reversible error. The request reads:

> "29. It is admitted that the capital gains tax on the sale of all of the Browne Vintners stock was paid, and, therefore, if the money which Rutkin received came to him as a result of his interest in Browne Vintners stock, it was not taxable, he was under no obligation to report it in his income tax return for 1943, and he must be acquitted. Even if you believe [fol. 1016] Rutkin made threats to Reinfeld and that these threats produced the money, if the money was in payment of Rutkin's interest in the Browne Vintners stock, he should be acquitted."

The trial Judge refused to charge this in the requested language and other than as he had charged. No exception

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[5] See Estate of Joseph Nitto, 13 T.C. 858, 866-867.

by the defense to the Court's refusal to charge request 29 as presented appears on the record. At the time exceptions were taken, the defense attorneys may have mistakenly assumed that an exception had been noted to the Court's refusal to charge request 29 as submitted. This may have resulted in inadvertent omission by appellant's attorneys to note such exception. We will consider the argument on its merits.

There is no difficulty as to the first sentence of the request. That constituted Rutkin's sole defense theory. It, together with the Government's contention, was charged by the Court as follows:

> "But then we come to the admitted payment of $250,000. Rutkin says that that $250,000 was a final settlement of his claim in Browne Vintners, and if that is so—and the government does not contend that the capital gains tax was not paid—he would not be obliged to report that income. But Reinfeld says no, 'that was the result of extortion. He got that money out of me by threatening me and my family', and he told the instances where those threats were made."

In so charging, the Court correctly outlined the Government and defense theories of the case on which the entire trial had been based. The remaining sentence of the request was palpably improper. The defense had never alleged, and does not so allege down to this moment, that Rutkin, though legally entitled to the $250,000, had threatened to kill Reinfeld in order to obtain it and that he had actually thus obtained it. That idea had not been advanced, [fol. 1017] or in the slightest manner intimated, until it was for the first time suggested in request 29. There is no pretense that there was any mention of it by either the defense or the Government attorneys in opening or closing arguments to the jury. There is not one word concerning it in the voluminous record other than as outlined in the second sentence of request 29. Rutkin's whole defense was that he was entitled to some amount greater than $250,000 as his share of Browne Vintners and that he had reluctantly accepted such sum from Reinfeld in settlement of his claim at Reinfeld's urging. It is true, of course, that the Government had produced evidence to show that Rutkin had forced Reinfeld under threat to kill to give him money not

rightfully his. It is also true that, according to Rutkin, he was peaceably paid $250,000 by Reinfeld in satisfaction of a claim worth more. But there is no evidence that Rutkin obtained his rightful money by threatening to kill Reinfeld. That is a new issue and one which was never tried under the indictment before us. It creates a new defense, a vital part of which (the threats) Rutkin, himself, denied under oath at his trial below.

Appellant, by the second sentence of the request, sought to have the jury decide the case on an issue which had never been before it. That part of the request was rightfully refused. Cf. Battle v. United States, 209 U.S. 36, 38; Bird v. United States, 187 U.S. 118, 132; Bakotich v. United States, 9 Cir., 4 F. 2d 386, 387. In Kleibor v. Colonial Stores, Inc. 4 Cir., 159 F. 2d 894, the attempt was made by plaintiff's attorney to take disconnected bits of testimony of the plaintiff Kleibor and from them construct a request to charge which would have presented to the jury a theory of the accident involved which had been expressly repudiated on the witness stand by the plaintiff. The refusal to charge the request was upheld on appeal, with the Court saying at page 896: "Counsel cannot marshal some of Kleibor's statements, to the exclusion of others, and construct a story which is not only different from Kleibor's, but one in which, [fol. 1018] by these same remarks, he unequivocally rejected the possibility now suggested."

Appellant's next point involves his exception to that part of the Court's charge which stated:

> "There has been some testimony here about evidence given by witnesses in other courts or in other trials or proceedings antecedent to trial, such testimony having been sworn. I believe that one of the witnesses said 'yes, he told a white lie.' But I know of no dictionary or no classification which would make perjury a white lie; and I don't care whether that perjury was committed to help a friend or not, because if you help a friend by perjury, what do you do to yourself? Who knows? But if you believe that any witness at this trial lied in any respect, then you are free to reject all of the testimony of that witness or any part of it. It doesn't mean, if you believe he lied in one instance, that you must necessarily believe that he lied in all instances, because you must apply to every

bit of the testimony your test of truth. So the fact that a witness lied in one respect doesn't, as I say, necessarily mean that he lied all the way through but is something for you to consider in determining what credibility you will give to the rest of that person's testimony; and that goes for every witness that appeared before you."

The defense attorney excepted as follows: "Now then I desire to take an exception to that part of your Honor's charge which said, "If you believe the witness lied, you may disregard all of his testimony." The Court then further charged the jury as follows:

"Counsel has said to me that I told you that if you believe the witness lied in any respect you might disregard all of his testimony. What I had in mind is that if you find that he lied you may accept or reject such testimony as you believe to be false or true, ac-[fol. 1019] cept the true and reject the false and if you had any other impression, please correct it to that extent."

No exception was taken to that further charge. Appellant insists that it is, in effect, the same as the original instruction. This is incorrect. There is a distinct difference between the two. By the corrective charge the Court withdrew from the jury the authority given it in the original instruction to reject *all* testimony of a witness who it believed "had lied in any respect". The second charge precisely told the jury that even in those circumstances that body could accept or reject testimony of the witness as it believed such testimony to be true or false.

On the merits of the argument appellant maintains that the Court, by so charging, misapplied the false in one, false in all doctrine; erroneously singled out Rutkin; and destroyed his competency as a witness.

Rutkin's defense to the indictment was that Reinfeld had given him the $250,000 in payment of his partnership interest in Browne Vintners. While his explanations of the extent of his interest in that venture varied, he did testify on both direct and cross examination that Zwillman and Stacher came into the concern as partners in 1930 and on cross examination he did say that his percentage was

about 13¾% after the advent of Zwillman. Later on cross examination he was questioned concerning testimony he had previously given under oath at a liquor license hearing in New York where he said he had not been in business with Zwillman or associated with him at all in any enterprise. Confronted with this he said, "I told a white lie over there." On his own admission the two statements were not mere contradictions. He had lied in one or the other. In New York, according to him, he had lied to protect "a friend's liquor license." At this trial his diametrically opposed testimony was material as part of the defense proof to establish him as a partner in Browne Vintners with a right to the $250,000 in settlement of his interest [fol. 1020] and, consequently, to be acquitted of the charge in the indictment.

With that trial situation in mind, we find no substantial error in the corrective charge. A conscious falsehood upon a material point was involved. Even if the lie had concerned some minor trial item we would be inclined to agree with Professor Wigmore that "In the nature of character, a person who would lie upon a collateral point is perhaps likely to be a more determined liar than one who dares it only upon a material point; at any rate there is no less a call to distrust the former than the latter." Wigmore on Evidence, 3rd Ed. Section 1014. In telling the jury that "* * * if you find that he lied you may accept or reject such testimony as you believe to be false or true, accept the true and reject the false and if you have any other impression, please correct it to that extent.", the Court was "* * * merely * * * [telling] the jury what they may do in any event, not what they must do or must not do, * * *." Wigmore on Evidence, 3rd Ed. Section 1008. And see Jones Commentaries on Evidence, 2nd Ed. Section 2473. Cf. Schneider v. United States, 3 Cir., 57 F. 2d 454, 456-457.

Nor do we think that what the Court said, above quoted, was erroneous from the view of prejudicial comment or that it destroyed appellant's competency as a witness.[6]

[6] The fact that earlier in his charge the Trial Judge had told the jury that appellant had a strong interest in the outcome of the case but, again, unmistakably leaving his credibility to the jury was free from error. Cf. Freedman v. United States, 3 Cir., 274 Fed. 603.

The incident did not involve a conflict of testimony on a hotly contested question of fact as in Virginia Ry. Co. v. Armentrout, 4 Cir., 166 F. 2d 400, cited by appellant. It arose simply because Rutkin had made two flatly opposed statements under oath which were on a material point. Rutkin, himself, selected his New York testimony as the lie. —"white lie" he called it. There was no unfair stressing of the episode. The Trial Judge quite properly referred to it in the charge but in his statement of the false in one, [fol. 1021] false in all rule he did not confine that rule to the defendant. He said, "That goes for every witness that appeared before you." After strongly charging presumption of innocence and reasonable doubt and throughout the charge reiterating that the jury was the sole judge of the facts and of the credibility of witnesses, the Court towards the end of the charge said specifically regarding appellant:

> "James Rutkin as a defendant at this bar of justice is entitled to every protection that the law gives him. I have tried to point them out to you and to stress them. None of these protections may be taken from him. The presumption of innocence goes with him all the way through the trial right down to the last moment of your deliberations and can be taken from him only by a verdict of guilty should you believe that the government has proven his guilt beyond a reasonable doubt. It is a real protection and it is something that you must be very careful of. Everything that I have pointed out that safeguards his liberty it is your bounden duty to keep in mind."

Appellant also claims that the Trial Judge improperly impugned the testimony of important witnesses for the defense in the following incident. Harry Davis and his brother, Joseph, both of whom had been members of the "High seas" combine and the later Browne Vintners, were defense witnesses. Harry testified after Joseph and on cross examination was asked whether, while he was in the liquor business after 1940 under the name of Capital Wines and Spirits, he had "a license revoked". The question was objected to with the request that it be stricken. The Court said:

> "Well, I frankly am not impressed by this witness or his brother, and I will not strike it from the record;

I think that he is using a subterfuge of saying I don't remember. As far as the particular question is con-
[fol. 1022] cerned, I don't see the materiality, and that is the only reason I will strike it."

Exception was taken to the Court's statement and the Court said: "I am stating my opinion of this witness. * * * From his remarks on the stand."

Our own examination of the testimony of these witnesses reveals them to have been palpably evasive in their answers regarding their "investment" and its results in the mentioned operations. Both of them stated that they could not remember how much they had invested or how much they had realized. After several such answers the Court had cautioned Joseph that he was testifying under oath. A little prior to the statement of the Court to which exception was taken, Harry had said he couldn't remember whether he and his brother had entered the arrangement at the same time as Zwillman and Stacher. Immediately thereafter, in answer to the Court's query he said it was at the same time. Following that he said that he did not remember how much he had put into the "so-called Reinfeld Company", how much he got out of it, or how much he received in any one year from it.

The episode reveals ample justification for the Trial Judge's statement of his personal reaction to these witnesses from their testimony. The Court, in the excepted to statement, was advising the defense attorney of this in the course of explaining his decision on the request to strike the question. Considering the circumstances, there was nothing improper in the Judge's language. In the charge, the Judge, in careful, understandable detail, instructed the jury that "the problem of determining the truth in the conflict of evidence was solely and peculiarly yours. And it is a province which may not be trespassed upon by anybody, *not by the court*, not by counsel for the defense, not by counsel for the prosecution. You have the right to say what degree of credibility you will give to any of the testimony which has been given here. You have the right to
[fol. 1023] consider the way in which the testimony was given and ask yourselves whether or not you believe that the persons giving the testimony told it in the manner of a straightforward, truth-telling person." (Emphasis

supplied). In addition, the Trial Judge instructed the jury with reference to his trial rulings as follows: "During the course of the trial the court has made certain rulings but those rulings are in no way to affect you, because I was passing on questions of law. I was not attempting in any way to indicate what my belief was about any particular matter, because, as I have told you, you are the sole judges of the facts."

We are satisfied that there is no substantial merit to this contention of appellant. As was said in Daniels v. Goldberg, 2 Cir., 173 F. 2d 911 at 917: "But a federal trial judge is not precluded from explicitly saying to a jury that he disbelieves a witness, provided the judge also states that the determination of the facts is for the jury." See also United States v. Curzio, 3 Cir., 170 F. 2d 354, 357; United States v. Chiarella, 2 Cir., 184 F. 2d 903, 908.

Lastly, the charge is objected to as argumentative, one-sided and prejudicial to the defendant. No such exceptions were taken to the charge. Indeed, immediately after its conclusion, the attorney for the defendant stated to the Court as follows:

> "As your Honor knows, we have been here for practically two full weeks. It has been a trial of some duration, I think some thirteen or fourteen hundred pages of testimony. I just want to take this opportunity to express the gratification it was to have the opportunity to try this case in the manner in which it was tried, and *for the fair trial which we have been accorded.* Those exceptions which I have just taken to the charge I of course had the right to take. *During the course of the trial I think your Honor has treated both sides fairly and impartially.* There have been times when we have felt the full effect of the alertness of your Honor's mind, but I am sure it has applied [fol. 1024] equally to the District Attorney and myself. I think the most unusual thing in a trial that lasted this long, while there have been objections and your Honor has ruled on them, sometimes overruling, sometimes sustaining the objections, I think it is safe to say there are not half a dozen objections in the record up to the time of the exceptions to the charge. In fact I can only recall two or three, and I think that is an unusual situation. In all trials I have been in and I have partici-

pated in one or two, I don't recall such things happening. *It is a tribute to the manner in which the trial has been conducted.*" (Emphasis supplied).

Under the circumstances the point could be, and should be, ruled on at once adversely to appellant. However, again, in order to avoid any possibility of serious, though unchallenged, error, we have examined the charge with the above complaint in mind. We find that it was concise, comprehensive and fair. The Trial Judge did tell the jury that "You are not deciding who is the bigger scoundrel, Reinfeld or Rutkin * * *." This occurred while the Court was impressing upon the jury that the case before it was not that of Reinfeld against Rutkin and advising that body just what the issue was. Also, taking a typical example of the objected to language, the District Judge, in going over the evidence, did refer to it as "this stinking recital"—a restrained statement of the brazen lawlessness which the trial testimony revealed. The Judge's language, in the instances complained of, was called for by the events necessarily described. It was not unjust to appellant.

There was sufficient evidence in the Government's case to warrant appellant's conviction under the indictment. The Trial Judge correctly refused to direct a judgment of acquittal. The factual issues were submitted to and passed upon by the jury without any error of substance arising. The judgment of conviction of the District Court will be affirmed.

[fol. 1025] HASTIE, *Circuit Judge*, dissenting.

I dissent.

It was the theory of the prosecution, borne out by the government's evidence, that Rutkin, by threats and show of force, compelled Reinfeld to pay him money, well knowing that nothing was due but couching his several menacing demands for various sums in terms of a general claim asserted in bad faith to some further distributive share on account of his one time interest in a certain business enterprise. The trial court instructed the jury that the fruits of such villainy would constitute taxable income. This court now approves that legal conclusion. However, I think disapproval is required by the reasoning of the Supreme Court in *Commissioner of Internal Revenue v. Wilcox*, 1946, 327 U.S. 404.

The Court reasoned in the *Wilcox* case and subsequently in *United States v. Lewis*, 1951, 340 U.S. 590, 592, that an embezzler is not required to report his misappropriation as taxable gain because he asserts no "bona fide legal or equitable claim" to it. The additional point is made in the *Wilcox* case that "a definite unqualified obligation to repay or return" the wrongful acquisition prevents it from being taxable gain". 327 U.S. at 408. To me this reasoning seems equally applicable to ransom money paid a kidnapper or, in this case, to the take of the more sophisticated extortionist who makes a patently spurious claim while frightening his victim into paying what both know is not owed.

In none of these cases is money obtained or retained under a bona fide claim of right. In none of them does the wrongdoer acquire even defeasible title to the proceeds of his wrongdoing. It is true that the discovery of embezzlement is usually followed by an attempt by the lawful owner to recapture that which has been stolen while, in extortion, the fear which causes the owner to surrender possession often prevents him from attempting to reclaim his [fol. 1026] own. But these differences affect neither the owner's title nor the wrongdoer's bad faith.

Finally, it seems to me that Rutkin's alleged claim of right to some additional compensation does not help the government's case. Indeed, the contention of the prosecution and its proof that Rutkin was well aware that nothing was owed him leaves whatever Rutkin may have said about an unsatisfied obligation without significance.

It follows that the reasons assigned by the Supreme Court for placing embezzled funds outside the category of taxable gain are equally forceful with reference to such extortion as the government alleged and undertook to prove here, and that the judgment should have been reversed.

A true Copy:
Teste:

——, Clerk of the United States Court of Appeals for the Third Circuit.

[fol. 1027] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA

vs.

JAMES RUTKIN, APPELLANT

On Appeal From the United States District Court for the District of New Jersey

Present: McLaughlin, Staley and Hastie, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Attest: Ida O. Creskoff, Clerk.

May 23, 1951.

(Received & Filed May 23, 1951. Ida O. Creskoff, Clerk.)

[fol. 1028] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA, APPELLEE,

vs.

JAMES RUTKIN, APPELLANT

Petition

To the Honorable Judges of the United States Court of Appeals:

The petition of James Rutkin, respectfully shows:

1. Petitioner was heretofore convicted in the United States District Court for the District of New Jersey, of a violation of 26 U.S.C. Sec. 145b.

2. The said judgment of conviction was thereafter appealed to this Court. On May 23, 1951, an order was entered in this Court whereby the judgment of the District Court was affirmed.

3. Petitioner desires to file a petition for a rehearing of the cause.

4. The time for filing such petition expires on June 7, 1951. Petitioner finds that he is unable within such expiration date to have printed and filed the petition for rehearing.

5. Petitioner is advised and believes that he has substantial grounds to support his application for rehearing, and such petition will be presented in good faith and not for the purpose of delay.

Wherefore, petitioner prays that the time for filing the petition for rehearing be extended to a time not later than 15 days from the order of this Court allowing such extension.

JACK L. COHEN,
Attorney for and of counsel with Petitioner.

Received & Filed June 5, 1951. Ida O. Creskoff, Clerk.

[fol. 1029] STATE OF NEW JERSEY:
County of Essex, ss:

James Rutkin, being duly sworn on his oath, according to law, deposes and says:

I am the petitioner in the foregoing petition named. The matters and facts set forth therein are true to the best of my knowledge, information and belief.

James Rutkin

Sworn and subscribed to before me this 4th day of June, 1951. Ann Ventre, A Notary Public of New Jersey.

[fol. 1030] [Endorsed:] United States Court of Appeals for the Third Circuit. #10,320; United States of America, Appellee, vs. James Rutkin, Appellant. Petition. Jack L. Cohen, Esq., 850 Broad St., Newark, N.J.

[fol. 1031] [Stamp:] Received & Filed, June 11, 1951, Ida O. Creskoff, Clerk.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA, Appellee,

v.

JAMES RUTKIN, Appellant.

ORDER

Present: McLaughlin, Staley and Hastie, Circuit Judges.

Appellant's petition for extension of time for filing of petition for rehearing in this matter is denied.

By the Court, McLaughlin, Circuit Judge.

June 11, 1951.

[fol. 1032] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,320

UNITED STATES OF AMERICA, Appellee,

v.

JAMES RUTKIN, Appellant.

The Clerk of this court is hereby authorized to receive and file typed petition for rehearing in the above-entitled case on June 12, 1951.

McLaughlin, Circuit Judge.

June 12, 1951.

(Received & Filed June 12, 1951, Ida O. Creskoff, Clerk.)

[fol. 1033] [Stamp:] Received & Filed June 12, 1951. Ida O. Creskoff, Clerk

UNITED STATES COURT OF APPEALS FOR THE THIRD DISTRICT

No. 10,320

UNITED STATES OF AMERICA, Appellee

vs.

JAMES RUTKIN, Appellant

PETITION FOR REHEARING

To the Honorable Judges of the United States Court of Appeals:

The petition of James Rutkin, respectfully requests this Court to order a rehearing of the instant cause for the following reasons:

1. Under the pertinent portion of the decisions in the case of Commissioner vs. Wilcox, 327 U.S. 404, and United States vs. Lewis — U.S. — March 26, 1951, a taxable gain under Section 22 (a) of the Internal Revenue Code is conditioned upon (1) "the presence of a claim of right to the alleged gain; and (2) the absence of a definite unconditional obligation to repay or return that which would otherwise constitute a gain". Both cases indicate clearly that the claim of right must be bona fide; that if the claim is baseless, the first element of a taxable gain is not present.

In the instant case, the presence of a bona fide claim of right (or a semblance thereof), would be fatal to the prosecution, because, as was correctly conceded by the government throughout the trial of the cause and in its brief on appeal, if the appellant had a bona fide claim of right, it was to a distributive share of the monies representing the proceeds of the sale of Browne-Vintners Co., Inc., which monies had been tax paid before coming into his hands, and he would be entitled to acquittal. See Brief [fol. 1034] for the United States, Page 28, reading as follows: "and if the $250,000.00, represented his share of the proceeds of the sale of that company, he is entitled to an acquittal as the trial court charged".

This Court has rested its affirmance of the judgment below in part on the premise that the jury could have found the figure of $250,000.00, was a compromise of appellant's bona fide claim to a distributive share of the proceeds of Browne-Vintners money and that appellant received the money with at least a semblance of a bona fide claim of right to the proceeds of the Browne-Vintners monies; Opinion of this Court Page 7, Line 26 and Page 8, Line 8. Such a finding by the jury, under the charge of the Court, and the pertinent tax statute, would have required an acquittal and this Court should have reversed the judgment below.

2. It was the theory of the prosecution, embodied in Reinfeld's testimony, that Reinfeld paid the appellant $250,000.00, as a result of threats against Reinfeld's life and that the appellant received this money under a claim of right asserted in bad faith, the appellant well knowing that nothing was due him. The opinion of this Court says at page 7, last paragraph, "As to the first condition, Reinfeld, according to the record, never denied the presence of a claim of right by Rutkin to some money". It must be constantly remembered that Reinfeld consistently described this claim of right as being utterly baseless and made in bad faith. See appellant's Appendix, page 49.

"Q. Well, all right, make it the company. But this was not for protecting the company, nor did it represent any unsatisfied financial claim of your company's? A. No, I didn't owe him anything.

"Q. Then you say that the $250,000.00, you gave because of the course of conduct which you have described? A. Yes."

[fol. 1035] See Appellant's Appendix, Page 159a:

"Q. When he started to demand money, what did he say? A. Well, he started about 'Where is my money' and I said 'Well, I haven't got your money, what money are you talking about?' I remind him again that I never held any of his money or had anything to do with his money and he starts saying to me that he is in debt and needs money badly. Finally he says, 'I have to have $100,000.' Then I said I wouldn't give it to him because I was upset what he

done with the $10,000. Well, then he started threatening me."

See Appellant's Appendix, Page 186a:

"Q. And up until a few days before the meeting in Holtz' house, so far as you know, had Rutkin received a statement as to where he stood? A. He didn't have anything coming."

The excerpt quoted above from the opinion of the Court is in contradiction to the record on this point and directly contrary to the position which the government took throughout the trial, which was to the effect that whatever claim Rutkin may have made, such claim did not have even the semblance of bona fides. In affirming this conviction, this Court has approved the legal proposition that a taxable gain under Section 22 (a) of the Internal Revenue Code is conditioned upon the presence of a claim of right to the alleged gain, even though the claim of right be asserted in bad faith and without any bona fides. The Wilcox and Lewis cases require the disapproval of such legal conclusion.

3. Regarding the second condition indicated by the Wilcox opinion as necessary to defeat a taxable gain, namely the presence of a definite unconditional obligation to repay or return the $250,000.00, to Reinfeld, if the funds were in fact misappropriated by the appellant by reason of threats and without a bona fide claim of right, the fact that Rutkin executed a general release [fol. 1036] would not remove his conduct from the characterization of extortion, and the fact that Reinfeld paid over the money to escape the execution of the death threats, could certainly not create either a defeasible title or a colorable claim of title to the money in the appellant.

What Reinfeld may or may not have done in the years following the payment of the money can have no effect upon the relationship which was created between Reinfeld and appellant for the purpose of Section 22 (a), at the time the money was paid.

This Court in its opinion beginning at the last paragraph of Page 9, found that there existed a plain inference of condonation or forgiveness of all of the unlawful

appropriation and its affirmance of the judgment below is based in part upon such finding. The Supreme Court in the Wilcox case in speaking of the possible effect of condonation at page 409 of its opinion, was careful to say that in the event of condonation "the taxpayer might have been subject to tax liability to that extent". Since condonation was lacking in the Wilcox case, the Court there made it plain that it was making the remark in passing and that it was not its considered opinion that condonation would bring the alleged gain within the purview of Section 22 (a).

Appellant feels that the points raised in this paragraph should be briefed and argued.

4. The Court charged the jury "If that money was extorted and was paid as a result of threats, then it was taxable income and Rutkin was under the duty to report that tax". (A930a). As indicated above in this petition, the theory of the prosecution, embodied in the testimony of Reinfeld, was that the appellant had secured the money by reason of a course of conduct amounting to the statutory [fol. 1037] crime of extortion. By this exception to this part of the charge, appellant challenged the legal accuracy thereof; by his motions for judgment of acquittal appellant directly raised the question of whether or not monies paid as the result of criminal extortion are taxable to the payee under Section 22 (a). Appellant respectfully submits that an answer to the question so raised is essential to a determination of whether or not the verdict below may be affirmed or reversed.

5. Point IV of Appellant's brief, in sub-division 1, claimed that the trial court omitted averments as to willfullness and materiality in charging the false in one, false in all maxim. The opinion of this Court makes no reference to this point of appeal. Appellant concludes that the court may have omitted consideration thereof. The point raises a question of substantial prejudicial error and should be re-argued so that this Court may pass upon it.

6. This Court at page 8 of its opinion finds that the appellant received the money with a "semblance of a bona fide claim of right", and thereby distinguishes the instant case from the Wilcox case. The government had proceeded throughout the trial upon the theory that the appel-

lant's conduct amounted to extortion and that his asserted claim was without even the semblance of a claim of right. The government had never alleged during the course of the trial that there existed even a semblance of a claim of right to the money on the part of the appellant. Such a concession on the part of the government would have been fatal to its case because under that theory, the money was tax paid. The idea of a "semblance" of a bona fide claim of right was never advanced or in the slightest manner intimated, until it was for the first time suggested [fol. 1038] in government's brief on appeal. There is no pretense that there was any mention of it by the government attorneys in opening or closing arguments to the jury. The entire effort of the government during the trial was directed toward negativing such a semblance of a bona fide claim of right in the appellant.

For these same reasons, this Court refused to sustain appellant's allegation of error in the trial court's refusal to charge Defense Request 29. See opinion of this Court, Page 11, last paragraph and Page 12. Yet this Court conversely sustains a conviction on a point which was absent from the entire case and was never an issue therein. Thereby the appellant was deprived of the opportunity to request proper instructions of law on this point. The defendant was further deprived of the opportunity to argue the point in summation to the jury. Most important of all, this point, which was not an issue throughout the entire trial, was neither briefed nor argued in this Court.

7. Petitioner shows that the refusal of this Court to reverse the conviction upon the points of appeal set forth in appellant's brief, is error in that the said points of appeal correctly set forth errors committed in the trial court which substantially prejudiced the appellant in the trial of the case below; and in that the said errors were each respectively grounds for reversal.

Jack L. Cohen, Attorney for and of counsel with Petitioner.

I hereby certify that the foregoing petition is submitted in good faith and not for purposes of delay.

Jack L. Cohen, Attorney for and of counsel with Petitioner.

[fol. 1039] State of New Jersey,

County of Essex, ss.

James Rutkin, being duly sworn on his oath, according to law, deposes and says:

I am the petitioner in the foregoing petiton named. I have read the petition and know the contents thereof, and the facts therein stated are true to the best of my knowledge, information and belief.

James Rutkin.

Sworn and subscribed to before me this 11th day of June, 1951. Ann Ventre, a Notary Public of New Jersey.

[fol. 1040] United States Court of Appeals for the Third Circuit. United States of America, Appellee, vs. James Rutkin, Appellant. Petition for Rehearing. Jack L. Cohen, Esq., 850 Broad S., Newark, N. J.

[fol. 1041] [Stamp:] Received & Filed Jun. 19, 1951. Ida O. Creskoff, Clerk.

United States Court of Appeals for the Third Circuit

No. 10,320

United States of America, Appellee,

v.

James Rutkin, Appellant

Order

Present: McLaughlin, Staley and Hastie, Circuit Judges

And now, to wit, June 19, 1951, after due consideration, the petition for rehearing in the above entitled case is hereby denied.

By the Court, McLaughlin, Circuit Judge.

[fol. 1042] I, Ida O. Creskoff, Clerk of the United States Courts of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendix to Appellant's Brief (2 volumes) and proceedings in this court in the case of United States of America vs. James Rutkin, Appellant, No. 10,320, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 29th day of June, in the year of our Lord one thousand nine hundred and fifty-one, and of the Independence of the United States the one hundred and seventy-fifth.

Ida O. Creskoff, Clerk of the U. S. Court of Appeals, Third Circuit. (Seal.)

[fol. 1043] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 195

ORDER ALLOWING CERTIORARI—Filed October 8, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office-Supreme Court, U. S.
FILED
JUL 18 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 195 OCTOBER TERM—1950

JAMES RUTKIN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT WITH BRIEF IN SUPPORT THEREOF

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IN THE

Supreme Court of the United States

No. OCTOBER TERM—1950

JAMES RUTKIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT WITH BRIEF IN SUPPORT THEREOF

To The Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, James Rutkin, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit in an opinion (annexed to the record herein) per McLAUGHLIN, *J.*; filed on May 23, 1951, affirming the judgment of conviction of the District Court for the District of New Jersey, convicting petitioner of wilfully attempting to defeat and evade income and victory taxes in violation of Section 145(b) of the Internal Revenue Code. Petitioner was sentenced to 4 years imprisonment and fined $10,000.00. Bail was denied by the District Judge. On application to the United States Court of Appeals for the Third Circuit, petitioner was admitted to bail in the sum of $50,000.00 upon condition that the aforesaid fine of $10,000.00 be paid into the Registry of the United States. The fine was paid and petitioner admitted to bail.

Timely application for rehearing was made to the United States Court of Appeals for the Third Circuit. The application was denied. The mandate of the United States Court of Appeals for the Third Circuit was stayed pending petitioner's application to this Court for a writ of certiorari. Petitioner is now at liberty on bail.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Statement of Case

The indictment contained one count. It charged that petitioner wilfully and knowingly attempted to defeat and evade income and victory taxes for the calendar year 1943 by filing a tax return which failed to include as income the sum of $250,000.00, which was received by petitioner under circumstances hereinafter related. The indictment is founded on Section 145(b) of the Internal Revenue Code (26 U. S. C. 1946 ed.).

Petitioner was convicted by a jury in the United States District Court for the District of New Jersey. He thereupon appealed to the United States Court of Appeals for the Third Circuit. The Court of Appeals affirmed the conviction in a divided opinion. Application for rehearing was denied.

Facts

Petitioner and one Joseph Reinfeld had been engaged as partners, with others, in the illegal liquor traffic during the Prohibition Era. Among the other partners were two men named Zwillman and Stacher (12a, 13a, 19a).[1]

[1] References throughout this petition and accompanying brief are to appendix to petitioner's brief in the Court of Appeals, unless otherwise indicated.

In 1933, a wholesale liquor company known as Browne-Vintners was formed and licensed in New York. The illicit combine was liquidated and its treasury became the original invested capital of Browne-Vintners (24a). To conceal the tainted source of this capital as well as the names of the true owners of the capital stock of Browne-Vintners, Reinfeld resorted to several devices. For example, he caused a large part of the capital stock of Browne-Vintners to be held in the names of nominees, with the real stockholders neither appearing of record, nor holding any evidence of their interest in the company (91a, 92a).

In 1940 the capital stock of Browne-Vintners was sold with a large resulting profit to stockholders. The nominees paid the capital gains tax due on these profits. In 1940 a capital gains tax was payable at a flat fixed rate without regard to the ordinary income tax bracket of the recipient of the gain. After payment of the capital gains tax Reinfeld paid the balance remaining to the true stockholders. The Government concedes that the tax due on these profits from the various true stockholders was paid by the nominees (93a). It was because the tax had already been paid on the profits of the Browne Vintners sale that the Government conceded and the trial Jury was charged, that if the petitioner received the $250,000.00 payment in settlement of a bonafide claim of stock ownership in Browne-Vintners, the $250,000.00 would not be taxable to him and the jury would then be obliged to acquit (932a).

In the latter part of 1942 Zwillman and Stacher claimed that Reinfeld had withheld from them part of the true sum due them as their derivative share of the proceeds of the Browne-Vintners stock. Several meetings were held which were attended by Reinfeld, Zwillman, Stacher and the petitioner. Some of these meetings were also attended by accountants and counsel. At the last of these meetings, Reinfeld agreed to pay Zwillman and Stacher $358,000.00 and to

pay petitioner $250,000.00 (45a, 46a, 48a). On May 11, 1943, the money, totalling $608,000.00, was paid in cash at the office of one of the attorneys in the presence of the three payees and three attorneys. A General Release, prepared by Reinfeld's attorney, was signed jointly by Zwillman, Stacher and the petitioner. The Browne-Vintners Company was one of the several releasees mentioned in this instrument (966a,[2] 970a).

In 1948, petitioner instituted a civil suit against Reinfeld in New York seeking accounting and damages in the amount of $22,000,000.00. One of the essential bases of this suit was petitioner's alleged interest in Browne-Vintners. In the course of a pre-trial deposition taken in 1949, Reinfeld said, for the first time, that petitioner had never had any interest whatsoever in Browne-Vintners. Reinfeld explained the payment of the aforesaid $250,000.00 by saying that the petitioner had extorted this money from him by threats to kill Reinfeld and his family unless he was paid a large sum of money (49a, 321a, 322a).

These statements by Reinfeld led to the instant indictment of the petitioner, almost seven years after the payment of the $250,000.00. Zwillman and Stacher were not indicted because the Government relied upon Reinfeld's affidavit that Zwillman and Stacher had received $358,000.00 as a further distributive share of the proceeds of the Browne-Vintners stock and since all the tax on the proceeds of the sale of that stock had been paid, no further tax was due thereon from any person having a bonafide claim to stock ownership in Browne-Vintners.

Petitioner always admitted the receipt of the $250,000.00 but claimed throughout the trial that the $250,000.00 was paid to him as his additional distributive share of the

[2] Exhibit D-8, the general release covering payments made to Zwillman, Stacher, and Rutkin, is set forth in full at page 966a of the Appendix to Petitioner's Brief in the Court of Appeals.

tax-paid proceeds of the sale of the Browne-Vintners stock, just as the $358,000.00 was paid to Zwillman and Stacher (932a). On the other hand, the Government contended throughout the trial that in 1943 petitioner had no claim whatsoever in the proceeds of the sale of the Browne-Vintners stock; that his assertion of such claim was to his knowledge without any basis in fact, and that such demands or claims as he made upon Reinfeld were spurious; and that petitioner extorted the $250,000.00 from Reinfeld by threats to kill Reinfeld or his family if the money was not paid (40a, 41a, 321a, 322a).[3] The case went to the jury under instructions by the trial Court that if they believed the contention of the Government beyond a reasonable doubt, the $250,000.00 was taxable income and they could convict the petitioner; that if the jury believed that the petitioner had received the money in settlement of a bona-fide claim of right to some stock ownership in Browne-Vintners, the $250,000.00 was not taxable and the petitioner should be acquitted (930a, 932a).

The Questions Presented

The following questions arise as a result of the action of the trial Court as affirmed by the United States Court of Appeals:

1. Is extorted money taxable within the meaning of 26 U. S. C. 22(a)?

2. Is extorted money taxable within the meaning of 26 U. S. C. 22(a) because an extortionist asserts a patently spurious claim thereto?

---

[3] Brief of Government in the Court of Appeals, at page 13, that:

"The $250,000.00 did not in any way represent a claim which the appellant had with reference to Browne-Vintners. The $250,000.00 was given by Reinfeld to the appellant because of the course of conduct in which the appellant had threatened to kill Reinfeld if he did not give him first $100,000.00, then $200,000.00, then up to $500,000.00 and finally $250,000.00."

3. Is extorted money taxable because the victim of the extortion condones the unlawful misappropriation?

4. Assuming that extorted money is not taxable, is the opinion and action of the Court of Appeals in conflict with former decisions of this Court in the cases of *Commissioner* v. *Wilcox*, 327 U. S. 404, and *U. S.* v. *Lewis*, U. S. March 26, 1951?

5. Where the trial Court charged the jury incorrectly in a specific instruction on a vital issue, and refused to give the jury a lucid statement of the relevant legal criteria on that same vital issue, and the Court of Appeals affirmed the conviction on the basis of new findings of fact, does the petitioner stand convicted according to the procedure and standards appropriate for criminal trial in the federal courts?

Reasons Relied Upon for Allowance of the Writ

The final decision in this cause is not limited to the Third Circuit but is of national effect. The decision of the Court below is apparently in conflict with the decisions of this Court in the *Wilcox* and *Lewis* cases. It is essential that the Internal Revenue Code be administered uniformly throughout the United States. Unless this Court passes upon the effect of condonation and spurious claims as affecting the doctrine and rationale of the *Wilcox* and *Lewis* cases, the Collector of Internal Revenue, the District and Appellate Courts of the United States and the citizens of the United States have no guide upon which to rely in such situations. Failure of this Court to provide such a guide will result in non-uniform administration of the Internal Revenue Code and conflicting decisions by the various District Courts and Circuits. Both these questions are ripe for decision and are squarely presented in the instant case.

The refusal of this Court to grant certiorari in the case of *Humphreys* v. *Commissioner*, 7 Cir., 125 F. 2d 340, 317 U. S. 637, has led to a belief that it is still law, although the *Humphreys* case was impliedly reversed by the decision of this Court in the *Wilcox* and *Lewis* cases. The *Humphreys* case stands for the proposition that ransom money extorted by a kidnapper is taxable. The *Humphreys* case should either be expressly reversed, or affirmed and distinguished in the light of the opinions in the *Wilcox* and *Lewis* cases. The finding by the Court below, that an extortionist may receive the fruits of his extortion with the semblance of a claim of right, is directly in conflict with the decisions of the courts of many states, including New York and New Jersey. This conflict should be resolved for the guidance of both Federal and State courts.

In addition, apparent and prejudicial legal error was committed in the trial of the cause. Under the general supervisory powers which this Court exercises over the District and Appellate Courts of the United States, these errors should be reversed and corrected in this Court.

Apart from such widespread effect on the administration of the Internal Revenue Laws and the administration of criminal justice in the Federal Courts, the decision sought to be reversed, if permitted to stand uncorrected, will result in the petitioner's incarceration upon proof of extortion and not proof of attempted income tax evasion, as charged in the indictment upon which petitioner was tried.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court for its review, a full and complete transcript of the record of all proceedings in said suit, proceeding or matter, and to stand to and abide by such

order and direction as this Court shall deem meet under the circumstances of the case, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem just and proper.

July 17, 1951.

(Signed) JAMES RUTKIN,
Petitioner.

(Signed) JACK L. COHEN,
Attorney for Petitioner.

(Signed) EDWARD HALLE,
Of Counsel.

Verification

UNITED STATES OF AMERICA,
STATE OF NEW YORK, } ss
COUNTY OF NEW YORK,

JAMES RUTKIN, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the petitioner named in the foregoing petition; and the matters therein contained are true to the best of my knowledge, information and belief.

(Signed) JAMES RUTKIN

Sworn and subscribed to before
me this 17th day of July, 1951.

JAMES J. AHRENS
Notary Public for the State of New York
Qualified in Nassau County
No. 30-5031225
Certs. filed with Co. Clerk's New York
and with City Register New York
Commission Expires March 30, 1952

ARGUMENT

POINT I

Is extorted money taxable within the meaning of 26 U. S. C. 22(a)?

The chief issue in the trial of this cause was as to the taxability under 26 U. S. C. 22(a) of the payment of $250,000.00 admittedly made to petitioner by Reinfeld (932a). The petitioner contended that the money came to him in payment of his bonafide claim to a share in the profits on the sale of the Browne-Vintners stock. In other words, that he received the money with a bonafide claim of right, or the semblance thereof (930a). The Government on the other hand contended that petitioner received the money solely because of threats which he had made against Reinfeld; that no bonafide claim or semblance thereof existed, and that the petitioner secured the money by extortion (930a).

The Government conceded that if petitioner received the money with a bonafide claim of right, or the semblance thereof, he would not be obliged to report the same because the tax thereon had already been paid.[4] The Government's contention in brief is that defendant secured this money by extortion. Examination of the case law on extortion indicates that it is the securing of money or other thing of value by threats to kill or do bodily injury without a bonafide claim to the money or thing of value demanded. *Loftus* v. *State*, 19 Atl. Rep. 103; *People* v. *Griffin*, 2 Barb. 427.

The money was taxable under the facts of this case, only if it was secured by extortion. The trial Court so in-

[4] Brief of Government filed in Court of Appeals, page 28:

> "At the outset, it is conceded that if the appellant was an owner of Browne-Vintners and if the $250,000.00 represented his share of the proceeds of the sale of that company, he was entitled to an acquittal as the trial Court charged."

structed the jury (932a). The Government agrees, that by its verdict, the jury rejected petitioner's contention and concluded that the $250,900.00 derived solely from extortion, as defined above, and that the petitioner had no bonafide claim, or semblance thereof, in the money derived from the sale of Browne-Vintners.[5] Therefore, unless money secured by extortion is taxable within the meaning of 22(a), this $250,000.00 was not taxable income to petitioner and the conviction can not be affirmed. A determination on this point was essential to a disposition of the appeal below but the lower Court failed to determine the same.

The cases hold that extortion is the securing of money by threats to do bodily harm without any bonafide claim or right to the money so secured. *People* v. *Griffin*, 2 Barb. 427; *Loftus* v. *State*, *supra*; *Cutter* v. *State*, 36 N. J. L. 125; the cases further hold that the use of threats to enforce collection of money does not constitute extortion, where the alleged extortionist has a bonafide claim of right, or the semblance thereof, to the money involved. *McMillen* v. *State*, 60 Ind. 216; *State* v. *Hammond*, 80 Ind. 81, 41 Am. Rep. 791; *Mann* v. *State*, 47 Ohio St. 556, 11 L. R. A. 656. Measured in the language of the decision of this Court in the case of *Commissioner* v. *Wilcox*, 327 U. S. 404 and *U. S.* v. *Lewis*, U. S. March 26, 1951, it is clear from the decisions of these various states that an extortionist receives the fruits of his extortion without the existence of a bonafide claim of right, or a semblance thereof, and that he receives the fruits of his extortion with a definite unconditional obligation to return the same. *Miller* v. *Eisele*, 111 N. J. L. 268. It further appears that a person from whom money was extorted is entitled under the statutes of New Jersey to replevy the money as soon as it

[5] Brief of Government filed in Court of Appeals, page 28:

"By its verdict the jury necessarily rejected the appellant's position and concluded that the $250,000.00 payment derived not from the appellant's allegedly undisclosed stock ownership in Browne-Vintners but from the threats made upon Reinfeld's life."

comes into the hands of the extortioner. New Jersey Statutes Annotated 2:73-1 and 2. An extortioner, like a thief or embezzler, is never vested with either a void or voidable title.

From all of the foregoing, when viewed in the light of the decisions in the *Wilcox* and *Lewis* cases, the moneys received by an extortionist are not taxable income within the meaning of Section 22(a). Despite the decision in the *Wilcox* and *Lewis* cases, the lower Court in this case and the Court in the case of *Estate of Joseph Nitto*, 13 T. C. 858 have held that extorted money was taxable within the meaning of 22(a). Both these decisions were rested in large part on the case of *Humphreys* v. *Commissioner*, 7 Cir., 125 F. 2d 340. This Court denied certiorari in the *Humphreys* case 317 U. S. 637. Armed with this denial, the Government in its brief filed in the *Wilcox* case argued strenuously that both extorted and embezzled funds are taxable. By its decision in the *Wilcox* case; this Court has impliedly reversed so much of the *Humphreys* case as held extorted money taxable within 22(a). This petition for certiorari should be granted and the *Humphreys* case expressly overruled, so that other courts in the future will decide such situations in a manner not in conflict with the *Wilcox* and *Lewis* cases.

POINT II

Is extorted money taxable under 22(a) because the extortionist asserts a patently spurious claim thereto?

As shown above, the Government throughout the trial relied for conviction upon the contention that the payment of the $250,000.00 was extorted by the petitioner. In its brief in the Court below, the Government for the first time argued that the payment to petitioner was taxable because

he had received the same under a claim of right;[6] but even at this point the Government does not concede that this claim of right which was asserted by petitioner was a bona-fide claim. In fact, the Government still says that the claim was spurious. (See footnote 5, *supra*). The Government of course does not admit that the claim was bonafide, because if it should so admit, having already conceded that the tax was paid on the Browne-Vintners' profit, it would have to further concede that the money was not taxable to petitioner. The Government argues that, because petitioner asserted a spurious claim of right, this money is taxable to petitioner and the case distinguishable from the rule laid down in the *Wilcox* and *Lewis* cases.

The lower Court approved such a legal conclusion.

This Court is now called upon to approve the legal conclusion that money received through extortion is taxable, if the unlawful demands of the extortioner are couched in terms of a spurious general claim asserted in bad faith. We agree with the language of the dissent in the Court below "that disapproval is required by the ruling of the Supreme Court in *Commissioner of Internal Revenue* v. *Wilcox*, 1946, 327 U. S. 404." Both the Government and the lower Court seemed to have missed the clear indication contained in the *Wilcox* and *Lewis* cases to the effect that income is not taxable unless there *exists* a *bonafide* claim of right, whether mistaken or not. There is nothing in the language of either of these cases which would permit the substitution of the word "spurious" for the word "bona-fide" or the substitution of the word "asserted" for the word "existence" in the phrase of the *Wilcox* decision which said taxability is conditioned upon "existence of a

[6] Brief of Government in the Court of Appeals, page 29:

"It will be recalled that both Reinfeld and the appellant testified that the appellant claimed the $250,000.00 as of right. * * * The taking under the alleged claim alone distinguishes this case from *Commissioner* v. *Wilcox* * * *."

bonafide legal or equitable claim." In this connection great weight should be given to the emphasis placed by this Court upon the phrase "bonafide claim" as repeated in the *Lewis* case. We are not here concerned with a bonafide claim of right which later was learned to be a mistaken one. In this case petitioner's claim was either bonafide or spurious when originally asserted and has not changed character in the interval between then and now. Since the jury came to the conclusion that the claim was spurious, it is not the type of claim which would render the money taxable under Section 22(a) in the light of the *Lewis* and *Wilcox* cases.

POINT III

Is extorted money taxable because the victim of the extortion condones the unlawful misappropriation?

In its brief in the Court below, the Government for the first time argued that the payment of $250,000.00 was taxable to petitioner, because Reinfeld had condoned the illegal means by which petitioner had secured payment thereof. Condonation had never been an issue in the trial Court. The point was never treated there by motion, requested charge, instructions or argument to the jury, and the point was likewise neither briefed nor argued in the Court below. Nevertheless the Court below rested its affirmance of the conviction strongly upon the finding of condonation, and to justify its action, rested upon the following language of this Court in the *Wilcox* case:

> "or had his employer condoned or have forgiven any part of the unlawful appropriation the taxpayer might have been subject to tax liability to that extent. But neither situation is present in this proceeding and we need not explore such possibilities." *Commissioner* v. *Wilcox*, 404, 409.

The quoted language of this Court was by its own declaration less than *dicta* and the point was expressly passed. By its action the Court below has squarely placed this issue before this Court.

The possibilities which may arise from condonation, for the purposes of Section 22(a), are varied. The counsel to the Treasury of the United States has so indicated and he has likewise indicated that the questions arising from condonation are far from settled. GCM 24945, CB 1946-2, page 27. In the instant case, for example, if the $250,000.00 was not taxable income because it was extorted, does condonation of the unlawful misappropriation translate the payment into a gift. If so, is it taxable to the donor or the donee? When a creditor erases a bad debt, the money loaned does not usually become taxable income to the donor. The further consideration arises as to when condonation became effective in this case. Was it when the release was taken or when the Statute of Limitations expired; or was it at some intervening time when Reinfeld may have decided to permanently forego the remedies which he might have pursued to recover the money.

Petitioner contends that under the facts of this case condonation would not translate the $250,000.00 into taxable income and respectfully urges that certiorari be granted so that he may have opportunity to brief and argue this point and so that the Commissioner of Internal Revenue and the Federal and State Courts may have the benefit and guidance on this point of a decision of this Court.

POINT IV

Assuming that extorted money is not taxable within 22(a) is the opinion and action of the Court below in conflict with former decisions of this Court in the cases of *Commissioner* v. *Wilcox*, 327 U. S. 404 and *U. S.* v. *Lewis*, U. S. March 26, 1951.

At the conclusion of the presentation of the Government's case in the trial Court, the Government's case was that petitioner had threatened Remfeld with violence and used a gun in the threat and threatened to kill him and his family and that the $250,000.00 was paid over not for any other purpose except to assuage the murderous instincts or threats of the defendant (321a, 322a).

The petitioner moved at that time for a judgment of acquittal upon the ground that money secured under those conditions was not taxable income within the meaning of Section 22(a); (315a). At the conclusion of the entire case the motion was renewed and the same ground was urged (915a, 916a). The trial Court denied the motions. The action of the Court of Appeals in failing to reverse the conviction is error in this respect, and is in conflict with the decisions of this Court in the *Lewis* and *Wilcox* cases. As shown above, it was Government's theory that the money could be taxable to the petitioner only if it was extorted. As also shown above, the trial Court so charged the jury. Assuming that extorted money is not taxable under the *Wilcox* and *Lewis* cases, the action of the Court of Appeals in affirming the conviction was error. The only hypothesis upon which the jury was instructed to find the defendant guilty was one which failed to state an offense under Federal law. Therefore, the defendant should have been acquitted and the Court of Appeals should have so ruled. Failure to do so, was tantamount to placing the defendant on trial for extortion.

Extortion is not an offense under Federal law and was not the crime for which the defendant was indicted. Failure to grant certiorari on this point and to reverse the conviction would subject petitioner to the deprivation of a fundamental constitutional right to wit: the right of a defendant to be tried for the crime for which he is charged in a particular indictment; and in that petitioner was convicted of an offense which was no part of the crime for which he was indicted.

POINT V

Where the trial Court charged the jury incorrectly in a specific instruction on a vital issue, and refused to give the jury a lucid statement of the relevant legal criteria on that same vital issue, and the Court of Appeals affirmed the conviction on the basis of new findings of fact, does the petitioner stand convicted according to the procedure and standards appropriate for criminal trial in the federal courts?

The defendant's counsel, in making requests to charge to the trial Court, included the following request No. 29, which the Court refused to charge:

> "It is admitted that the capital gains tax on the sale of all the Browne-Vintners stock was paid, and, therefore, if the money which Rutkin received came to him as a result of his interest in Browne-Vintners stock, it was not taxable, he was under no obligation to report it in his income tax return for 1943, and he must be acquitted. Even if you believe Rutkin made threats to Reinfeld and that these threats produced the money, if the money was in payment of Rutkin's interest in the Browne-Vintners stock, he should be acquitted." (949a)

It is submitted, for the reasons following, that the refusal of the Court to make the charge in the language as

requested, or the substance of the charge in any language, was prejudicial error which this Court should review in the exercise of its supervisory jurisdiction over the administration of justice in Federal Courts.

Rutkin in his defense claimed the $250,000.00 payment as of right from Reinfeld, as the holder of his derivative share in the tax paid profits and return of capital in the Browne-Vintners venture. It is conceded that all income taxes due from the profits of the Browne-Vintners sale had been declared and paid to the Government prior to 1943, by the nominees and that none of the beneficial holders of the stock were, as a consequence, required to pay any further income tax on the mentioned profits.

The Government, while making this concession, nevertheless prosecuted the petitioner on the theory that the payment he received from Reinfeld was not a part of the stock transaction but that the funds were paid purely as a result of threats petitioner made to Reinfeld without any semblance of a claim of right to the monies. In charging the Jury, the trial Court gave instructions which presented a sharp dichotomy: leaving them the choice of acquittal, if they found that petitioner was entitled to the fund as of right; or of guilt, if they found that the payment was made as a result of extortion. The instructions precluded the middle ground, which was a justifiable hypothesis on all the evidence presented, as set forth in the refused request No. 29, that petitioner was rightfully entitled to the money but enforced payment to him by the means of threats.

The pertinent parts of the Courts charge follow:

> "If that money was extorted and was paid as a result of threats, then it was taxable income and Rutkin was under the duty of reporting that tax." (930a)

"There is no contention here that the defendant didn't know he got the $250,000; the whole point is whether he got it by extortion or whether he got it properly. If he got it properly the tax was already paid." (932a)

These excerpts contain the only reference in the Court's charge to guide the jury concerning the keystone upon which was balanced the guilt or innocence of the petitioner. First: the Court states that if the money was extorted and paid as a result of threats, the petitioner is guilty. Second: the Court states the whole point is whether petitioner got it by extortion, or whether he got it properly. The entire instruction leads the Jury to only one result if they find as fact that the threats were made. They simply follow the line of reasoning as instructed: (1) threats mean extortion, (2) extortion results in taxable income not reported, (3) petitioner must be found guilty.

The instructions provided by the Court do not permit the Jury to find that petitioner received the money "properly" if they at the same time find that threats were employed. Thus, it resulted in substantial prejudicial error when request No. 29, which would have clarified the charge, was refused.

The trial Court's instruction to the jury that extorted money is taxable was a specific instruction on a vital issue. In reviewing the conviction, the question is not whether guilt may be spelled out of the record on the basis of new findings of fact by the Court of Appeals, but whether guilt has been found by the jury according to the standards appropriate for criminal trials in federal courts and whether the finding of guilt by the jury is based upon instructions which clearly set forth the state of the law on the vital issues concerned. *Bollenback* v. *U. S.*, 326 U. S. 607.

In the instant case it is impossible to disregard the misdirection by assuming that the jury paid no attention to it, because the jury was also instructed that it could convict only if it found that the $250,000 was extorted. In charging as he did on this point and in refusing defendant's requested charge No. 29, the trial Court failed in his responsibility to give the jury a lucid statement of relevant legal criteria. Only upon such a statement can a jury adequately discharge its responsibility for drawing appropriate conclusions from the testimony. The Court of Appeals sustained the conviction upon its own finding that the defendant received the $250,000 with a claim of right, as opposed to the jury's finding it had been extorted. We now have conflicting theories in the trial Court and in the Court of Appeals regarding a charge designed to guide the jury in determining guilt. Yet the conviction was affirmed upon the assumption that the jury was properly guided. Under these circumstances, the assumption must fall.

CONCLUSION

For the reasons assigned and the authorities in support thereof, this Court should grant the writ of certiorari to petitioner, and, upon appeal which shall be heard thereon, reverse petitioner's conviction.

Respectfully submitted,

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IN THE

Supreme Court of the United States

No. 195 OCTOBER TERM, 1950

JAMES RUTKIN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

POINT I

The theory of law upon which the Solicitor General argues to sustain the conviction of petitioner is novel, has not been ruled upon in any prior decision of this Court and aside from what might be implied in the opinion of the Court of Appeals, below, there is no precedent in support thereof.

The Solicitor General argues, at page 12 of the Brief in Opposition, that the facts in this matter come within the rules of law as set forth by this Court in *North American Oil* v. *Burnet*, 286 U. S. 417 and *United States* v. *Lewis*,

340 U. S. 590, rehearing denied, 341 U. S. 923; and that the decision of this Court in the case of *Commissioner* v. *Wilcox*, 327 U. S. 404, is inapplicable.

It is submitted that the Government's argument does not follow through to substantiate its mentioned contention. In both cases of *North American Oil* v. *Burnet*, *supra*, and *U. S.* v. *Lewis*, *supra*, this Court enunciated the rule that where a taxpayer received income under a bona fide claim of right he was required to make a return and pay tax. On the other hand, this Court in *Commissioner* v. *Wilcox*, *supra*, decided that funds received with no bona fide legal or equitable claim did not constitute returnable income.

If the petitioner herein had proved his contention that he was entitled to the payment as of right as his share of the proceeds of the sale of Browne-Vintners the case would have fallen within the rulings of *North American Oil* v. *Burnet*, *supra*, and *U. S.* v. *Lewis*, *supra*, and the taxes having been paid the petitioner would have necessarily been acquitted. Since the jury voted for conviction, upon instructions to acquit or convict on the basis of a finding of extortion (see Point V, Petitioner's Brief annexed to Petition), there is implicit in their verdict a finding that the petitioner had no bona fide claim of right to the money he received from Reinfeld. Therefore, the rulings in *North American Oil* v. *Burnet*, *supra*, and *U. S.* v. *Lewis*, *supra*, do not apply.

It is petitioner's contention that the rule of law set forth in *Commissioner* v. *Wilcox*, *supra*, does apply herein, inasmuch as the jury in its verdict found that he had obtained the money by extortion with no bona fide claim of right. The United States recognized the apparent inconsistency of its position here but attempts to resolve the dilemma by constructing a new rule of law which has not heretofore been decided.

The Solicitor General states at page 3 of his brief that the Government charged the payment in question was made as the result of extortion. Nevertheless, on page 15 of the Government's brief it is stated that there is a "middle ground" between the petitioner's rejected contention that he was entitled to the payment as of right and the case of securing money at gunpoint (extortion); the former payment being obtained under a bona fide claim of right and taxable, the latter payment being obtained without right and therefore non-taxable. This "middle ground" which Government seeks to assert is simply that where an individual asserts a claim, baseless in fact, and pursues this baseless claim so insistently and threateningly as to result in a decision by the victim to negotiate a settlement, payment made under such circumstances permits a jury to decide that such individual had a "claim" but that he had no "right."

The Government's argument attempts to follow the decision of the Court of Appeals wherein it was found that the petitioner had the "semblance of a bona fide claim of right" (opinion of Court of Appeals, p. 8). Thus, both the Government's Opposition Brief and the opinion of the Court of Appeals recognize that the jury could find no "bona fide claim of right" in convicting the petitioner. Such verdict should necessarily be reversed under the rule of *Commissioner* v. *Wilcox, supra.*

The Court of Appeals for the first time introduced the new theory that the "semblance of a bona fide claim of right" was equivalent to an actual bona fide claim of right and that since Reinfeld the "victim" never attempted to recover the money it constituted taxable income to the petitioner.

The crux of culpability for income tax evasion is whether the alleged evader *wilfully* evaded reporting and paying the alleged tax due. If the petitioner received this money on the theory of *any kind* of a claim of right that it was

his share of the sale of Browne-Vintners Co. with knowledge that the taxes on such fund were paid, the necessary wilfulness for conviction of tax evasion was lacking. If, on the other hand, the petitioner in his own mind knew he had a baseless claim and actually used threats to enforce such claim then it is a pure and simple matter of extortion and no bona fide claim of right or any "semblance" thereof can be substantiated.

It was argued in Point I of the brief annexed to the petition that monies obtained by extortion are received by the wrongdoer without a bona fide claim of right. The Government has failed to submit a single decided case against this contention or to support their proposition that one who enforces payment of a spurious claim by threats and show of force, receives such money with the "semblance of a bona fide claim of right"; nor has the Court below cited authority for its findings in this respect.

In furtherance of its theory of the case, the Court of Appeals below stated at page 7 of its opinion: "* * * Reinfeld, according to the record, never denied the presence of a claim of right by Rutkin to some money."

We respectfully, but strenuously, submit that this statement is absolutely without support in the record. Reinfeld consistently denied the presence of a claim of right by Rutkin. Although he testified to several claims or demands made by petitioner, throughout his testimony Reinfeld insisted that the said claims were not claims of right but were entirely spurious, and unwaveringly termed them as being baseless demands.

The Government argues in addition, that in the instant case, there was no definite unconditional obligation to repay or return the funds as there was in the *Wilcox* case. In support of this argument, the Government quotes from the opinion of the Court below as follows:

> "* * * there is not the slightest hint in the record that Rutkin ever had or has such obligation. Reinfeld, after agreeing to giving the $250,000.00, to Rutkin, did cause that sum to be turned over to him and took from him a general release. Reinfeld, the owner of the funds, participated in what he designates as their misappropriation by his own conscious acts. Obviously, as a result of that transaction, Rutkin at that time possessed a colorable claim of title to the money. This has never since been challenged. Reinfeld has unmistakably considered the $250,000.00, to be Rutkin's property. He has left Rutkin in undisputed possession of it for the last eight years and has permitted the statute of limitations to expire on whatever right he might have had to reclaim the money."

It is respectfully submitted that the very first sentence of this quotation indicates the point at which the Court of Appeals first fell into error. The question of whether or not Rutkin had a definite unconditional obligation to repay or return the funds is not to be found in the record, but in the legal principles applicable to the fact conclusions which the jury was obliged to reach in order to convict. More than 100 years ago, the Supreme Court of the United States said, "Where money is wrongfully and illegally exacted, it is received without any legal right or authority to receive it; and the law, at the very time of payment, creates obligation to refund it. A notice of intention to recover back the money does not, even in such cases, create the right to recover it back: that results from the illegal exaction of it, * * *." (*Bank of U. S.* v. *Bank of Washington*, 6 Pet. 6, 8 L. Ed. 299, 304.) In the accompanying note (starting at page 299 of the Law Ed.), the following language is particularly pertinent:

> "If one man has obtained money of another through the medium of oppression, * * * extortion * * *, such money is in contemplation of law, money

> received for the use of the injured party, it is not the money of the wrong-doer, and he has no right to retain it. The law implies a promise from him to return it to the rightful owner."

The above cited case was cited with approval in *Hartford-Empire Co.* v. *Shawkee Mfg. Co.*, 163 Fed. 2d 474, 3 Cir. (1947), in an opinion written by the same Judge who wrote the opinion in the Court of Appeals in the instant case.

The fact that Reinfeld had permitted Botkin to remain in undisputed possession of the money for eight years and had permitted the Statute of Limitations to expire on whatever right he might have had to reclaim the money did not alter the obligation of petitioner to return monies obtained by extortion. The duty to return the money paid is fixed by law absolutely and immediately upon the wrongdoer, and mere lapse of time, or lack of election on the part of the owner to recover the money, does not expunge this absolute duty to return the money. (*McKnight* v. *Commissioner of Internal Revenue*, 127 F. 2d 572, 573, 574; see also *Commissioner of Internal Revenue* v. *Turney*, 82 F. 2d 661, 662).

Neither the Government nor the Court of Appeals has cited a single authority for the proposition that a person who secures money by extortion is not under an unconditional obligation to repay or return the monies which he receives as the result of his unlawful acts. The unanimous weight of authority in this country indicates that a person who receives monies under the facts as contended by the Government, is under an unconditional obligation to repay or return the same. (70 C. J. S., p. 350, Sec. 146; *Miller* v. *Eisele*, 111 N. J. L. 268.)

The entire decision of the Court of Appeals below, sets a precedent which throws the rules already established by this Court into a state of confusion. Under the present decisions of this Court an alleged taxpayer may be classified as one who either has *no bona fide claim of right* to monies received or one who has *an actual bona fide claim of right* to

such monies. There is no middle ground. It is submitted that there can be no middle ground since a man either has or has not a bona fide claim of right to monies received. It must be one or the other, and it is certainly true that a claim of right can never been established, if it does not already exist, by the relentless assertion of a spurious claim accompanied by continuing threats of violence.

By the Government's own admission in its argument, a novel theory is presented herein, which is at odds with the existing state of the law as set down in the decisions of this Court, and it is submitted that this Court should grant certiorari herein.

POINT II

Assuming *arguendo* that the Government's theory of the rule of law applicable to the instant case is correct, the jury did not receive the case with proper instructions, and therefore their verdict should be reversed.

The trial Court below in its charge to the jury, as was argued in Point V of petitioner's brief annexed to petition, instructed them in such a manner as to leave them only the choice of acquittal if they found that petitioner was entitled to the fund as of right, or of guilt if they found that the payment was made as a result of extortion. On the basis of this charge, the petitioner could be acquitted only if the jury found he had a bona fide legal or equitable claim to the money and did not use threats to collect it. At no place in the charge of the trial Court was the jury instructed as to the legal eventualities present in the case if they should find that the petitioner had a "semblance of a bona fide legal or equitable claim."

Thus, the entire theory upon which the Government now relies to sustain the conviction was never presented to the jury, with proper instructions, to determine whether the facts in the case as found by them fitted into the "middle ground" theory of the Government. It is submitted that the petitioner's conviction must be reversed inasmuch as he was found guilty by the jury for tax evasion based upon obtaining money by a pure extortion.

The rules of law set down in *Commissioner* v. *Wilcox*, *supra*, require the reversal of such a verdict. On the other hand, if there is any merit to the Government's contention concerning their "middle ground" theory, it is submitted that this case should be reversed and remanded for a new trial with instructions that at such trial the jury be apprised of the pertinent rule of law involved.

In connection with the Court's Charge, in addition to the fact that the jury were not properly instructed, it is respectfully submitted that the final portion of the charge was highly prejudicial to the petitioner in that it contained a vast amount of irrelevant and immaterial matter which was of a highly inflammatory nature.

We refer to pages 933a-934a of the record wherein the trial Court charged as follows:

> "But as you do that you must remember the other party to the controversy, the United States of America. Now, the United States of America is not just some far off idea or some distant concept. The United States of America is you and I and about one hundred and forty-five or one hundred and fifty million of our fellow-citizens who are banded together under law, trying to live in peace and comity with ourselves and with the rest of the world; trying desperately to make this America what so many men have suffered and died to make it; the land where justice exists; the land where honesty and decency is represented; where we have selected the

government; *where we won't be governed by any supergovernment, by any deleterious influences*, but where we will be governed under our principles of freedom by the men and women that we select to govern us and that we hope will live up to the sacredness of their oath of service, although you have had a sample here where that is not quite true. But under God that is what we are aiming at. We are aiming at freedom and truth and justice.

And so the people of the United States have their rights too and those rights must be guarded just as jealously as the rights which you guard jealously for James Rutkin. The Government of the United States doesn't ask you to sacrifice anybody to prove its might. It asks you to do justice. That's all that Rutkin has a right to ask you to do, and that's what the Government of the United States asks you to do. *It asks you to remember its rights too, remembering that unpunished crime, undetected crime, are threats to the majesty and dignity of our government*; and that unpunished crime undermines our government. We all of us must do that which is our duty and do it without fear or favor. And so, keeping the balance between the two parties to this suit, the United States of America and James Ratkin, do justice between them. And I know of no better way in which to recall to you that which you must do than to recall the words of your oath, 'a true verdict to render according to the evidence, so help you God'. And if you do that, no one may quarrel with your verdict." (Italics ours.)

It is submitted that the petitioner was on trial for Income Tax evasion and for no other crime. The entire quoted portion of the Judge's charge tended to infer to the jury that here was the Government's opportunity to mete out punishment by means of this case for other matters not connected with the crime of Income Tax evasion. The trial Court specifically referred to the fact that "undetected crime" constituted a threat to the majesty and dignity of

the Government and that "we won't be governed by any supergovernment" or by any deleterious influences.

Inasmuch as the Government indicted the petitioner for Income Tax evasion, it cannot be said that the Court was referring to the charges of the indictment under which petitioner was tried, since, if the basis for these charges were undetected, there would have been no trial at all. The Court must have been referring either to the alleged extortion which was not a federal offense, or implying an innuendo that this petitioner was a part of some supergovernment which controlled the Government of the United States. Certainly these facts could have no bearing on the guilt or innocence of the petitioner to the specific charges alleged in the indictment and could only serve to prejudice him in the eyes of the jury.

The remarks of the Court were virtually an instruction to the jury to convict this petitioner, if not for Income Tax evasion, then for other offenses which the Government suspected but could not detect and punish.

CONCLUSION

For the reasons stated herein and in the brief of petitioner annexed to the petition, this Court should grant a writ of certiorari to the petitioner and, upon the appeal which shall be heard thereon, reverse petitioner's conviction.

Respectfully submitted,

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Of Counsel.

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IN THE

Supreme Court of the United States

No. 195 OCTOBER TERM, 1950

JAMES RUTKIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONER

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Statement of the Case

Petitioner was convicted by a jury in the United States District Court for the District of New Jersey, upon an indictment containing one count which charged that petitioner willfully and knowingly attempted to defeat and evade income and victory taxes for the calendar year 1943, by filing a tax return which failed to include as income the sum of $250,000.00, which was received by petitioner under circumstances hereafter related. The indictment is founded on Section 145 (b) of the "Internal Revenue Code" (26 U. S. C. 1946 Ed.).

Upon appeal the conviction was affirmed, in a divided opinion, by the United States Court of Appeals for the Third Circuit. Application for rehearing was denied. Petitioner's application to this Court for certiorari to review the decision of the Court of Appeals was granted, and the case is now in this Court for decision.

Statute Involved

26 U. S. C. A. 145 (b)

"Any person * * * who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall * * * be guilty of a felony and, upon conviction thereof, be fined not more than $10,000.00, or imprisoned for not more than five years, or both, together with the costs of prosecution."

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Questions Presented

1. Is money secured by extortion taxable income within the meaning of 26 U. S. C. 22 (a)?

2. Is money secured by extortion taxable income within the meaning of 26 U. S. C. 22 (a) because the extortioner asserts a patently spurious claim thereto?

3. Did the trial court err in refusing to grant a motion to direct a judgment of acquittal made at the conclusion of the government's direct case?

4. May a Court of Appeals properly affirm a conviction upon a new finding of fact, when the trial jury was entirely uninstructed on the law to be applied to such finding?

5. Did the trial court commit reversible error in charging the jury incorrectly in a specific instruction on a vital issue, and in refusing petitioner's request to give the jury a lucid statement of the relevant legal criteria on that same issue?

6. Did the trial court properly charge the "false in one, false in all," maxim?

7. Did the trial court's charge erroneously impair the petitioner's testimony?

8. Did the trial court err in impugning the testimony of important witnesses for the defense?

9. Was the charge of the trial court argumentative and one-sided?

Preliminary Statement

Petitioner and one Joseph Reinfeld had been engaged as partners, with others, in the illegal liquor traffic during the Prohibition Era. Among the other partners were two men named Zwillman and Stacher (R12, R13, R19).*

In 1933, a wholesale liquor company known as Browne-Vintners was formed and licensed in New York. The illicit combine was liquidated and its treasury became the original invested capital of Browne-Vintners (R24). To conceal the tainted source of this capital as well as the names of the true owners of the capital stock of Browne-Vintners, Reinfeld resorted to several devices. For example, he caused a large part of the capital stock of Browne-Vintners to be held in the names of nominees, with the real stockholders neither appearing of record, nor holding any evidence of their interest in the company (R91, R92).

In 1940 the capital stock of Browne-Vintners was sold with a large resulting profit to stockholders. The nominees paid the capital gains tax due on these profits. In 1940 a capital gains tax was payable at a flat fixed rate without regard to the ordinary income tax bracket of the recipient of the gain. After payment of the capital gains tax Reinfeld paid the balance remaining to the true stockholders. The Government concedes that the tax due on these profits from the various true stockholders was paid by the nominees (R93). It was because the tax had already been paid on the profits of the Browne-Vintners sale that the Government conceded and the trial Jury was charged, that if the petitioner received the $250,000.00 payment in settlement of a bona fide claim of stock ownership in Browne-Vintners, the $250,000.00 would not be taxable to him and the jury would then be obliged to acquit (R932).

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* Refers to pages of printed Record on Appeal.

In the latter part of 1942 Zwillman and Stacher claimed that Reinfeld had withheld from them part of the true sum due them as their derivative share of the proceeds of the Browne-Vintners stock. Several meetings were held which were attended by Reinfeld, Zwillman, Stacher and the petitioner. Some of these meetings were also attended by accountants and counsel. At the last of these meetings, Reinfeld agreed to pay Zwillman and Stacher $358,000.00 and to pay petitioner $250,000.00 (R45, R46, R48). On May 11, 1943, the money, totalling $608,000.00, was paid in cash at the office of one of the attorneys in the presence of the three payees and three attorneys. A General Release, prepared by Reinfeld's attorney, was signed jointly by Zwillman, Stacher and the petitioner. The Browne-Vintners Company was one of the several releasees mentioned in this instrument (R966,[1] R970). Neither at the time of the payment, nor at any other time, did Reinfeld deliver to Rutkin a general release, or any other type of release with respect to the $250,000.00 which Reinfeld paid to Rutkin on May 11, 1943.

In 1948, petitioner instituted a civil suit against Reinfeld in New York seeking accounting and damages in the amount of $22,000,000.00. One of the essential bases of this suit was petitioner's alleged interest in Browne-Vintners. In the course of a pre-trial deposition taken in 1949, Reinfeld said, for the first time, that petitioner had never had any interest whatsoever in Browne-Vintners. Reinfeld explained the payment of the aforesaid $250,000.00 by saying that the petitioner had extorted this money from him by threats to kill Reinfeld and his family unless he was paid a large sum of money (R49, R321, R322).

These statements by Reinfeld led to the instant indictment of the petitioner, almost seven years after the pay-

[1] Exhibit D-8, the general release covering payments made to Zwillman, Stacher, and Rutkin, is set forth in full at page R966 of the Appendix to Petitioner's Brief in the Court of Appeals.

ment of the $250,000.00. Zwillman and Stacher were not indicted because the Government relied upon Reinfeld's affidavit that Zwillman and Stacher had received $358,000.00 as a further distributive share of the proceeds of the Browne-Vintners stock and since all the tax on the proceeds of the sale of that stock had been paid, no further tax was due thereon from any person having a bona fide claim to stock ownership in Browne-Vintners.

Petitioner always admitted the receipt of the $250,000.00 but claimed throughout the trial that the $250,000.00 was paid to him as his additional distributive share of the tax-paid proceeds of the sale of the Browne-Vintners stock, just as the $358,000.00 was paid to Zwillman and Stacher (R932). On the other hand, the Government contended throughout the trial that in 1943 petitioner had no claim whatsoever in the proceeds of the sale of the Browne-Vintners stock; that his assertion of such claim was to his knowledge without any basis in fact, and that such demands or claims as he made upon Reinfeld were spurious; and that petitioner extorted the $250,000.00 from Reinfeld by threats to kill Reinfeld or his family if the money was not paid (R40, R41, R321, R322).[2] The case went to the jury under instructions by the trial Court that if they believed the contention of the Government beyond a reasonable doubt, the $250,000.00 was taxable income and they could convict the petitioner; that if the jury believed that the petitioner had received the money without the use of threats in settlement of a bona fide claim of right to some stock ownership in Browne-Vintners, the $250,000.00 was not taxable and the petitioner should be acquitted (R930, R932).

[2] Brief of Government in the Court of Appeals, at page 13, that:

> "The $250,000.00 did not in any way represent a claim which the appellant had with reference to Browne-Vintners. The $250,000.00 was given by Reinfeld to the appellant because of the course of conduct in which the appellant had threatened to kill Reinfeld if he did not give him first $100,000.00, then $200,000.00, then up to $500,000.00 and finally $250,000.00."

Statement of the Evidence

Starting in 1926, Reinfeld was engaged in two liquor ventures. One, conducted in the name of a company called P. R. Chartier, consisted of the purchase and sale of liquor on the islands of St. Pierre and Miquelon in the Bay of St. Lawrence. Reinfeld had a 17½% interest in that company (R12, R71). The other activity which he referred to as the "high seas venture" consisted of selling liquor from boats which remained beyond the twelve mile limit (R12, R13). Both ventures continued until 1932.

Reinfeld had a number of partners in the high seas venture, namely, Kanengiser, Facher, Schneider, Lentz and Hendler, erroneously called "Handler" (R13, R64). In fact, there were other partners, consisteing of his brothers, a brother-in-law named Holtz and others. One group was known as the Kanengiser group and the other as the Reinfeld group (R20).

Rutkin also was engaged in the liquor business. He and Reinfeld had known each other since 1923 (R12). In 1926 Rutkin joined Reinfeld's group (R14). Reinfeld said that Kanengiser brought Rutkin in, an act which Kanengiser attributed to Reinfeld (R14, R342). Reinfeld testified that Rutkin did not put any money into the enterprise and that he was accepted because he and his group were afraid they would encounter trouble and interference from Rutkin (R14). Examination disclosed, however, that the claimed fear was not engendered by anything that Rutkin either said or did (R16, R17). It was Rutkin's evidence that he paid $60,000.00 into the partnership (R635, R636). Rutkin's interest was increased when Hendler retired and Rutkin acquired his share (R18).

In 1930, others, known as the Seaman-Davis group, joined the enterprise and received a 50% interest (R19).

That group consisted of Seaman, Joseph Davis, Harry Davis, Zwillman, Stacher and four or five others. The Reinfeld-Kanengiser groups then had 50% of the partnership and the Seaman-Davis group had the remaining 50% (R20, R21). The enterprise was terminated in 1933 at which time Reinfeld concedes Rutkin had 6% of the total venture, or 12% of the Reinfeld-Kanengiser interest (R21, R22). Liquidation did not result in distribution of the assets. There was an accounting, both percentage-wise and dollar-wise rendered to each individual member of the partnership by Kanengiser, who prepared the accounting and submitted the same to the partners (R21, R22, R23). Only a small portion of the assets was distributed and the balance was retained for investment in the Browne-Vintners Company, which was organized in October 1943 (R21, R24, R25). Preparations for the organization and operation of such a company, which was to engage in the wholesale liquor business, were begun in 1932 when it appeared that prohibition was coming to an end. Reinfeld, Rutkin, Seaman and Holtz went to Europe in that year at the expense of the partnership for the purpose of securing agencies for foreign liquors to be sold by the company to be formed (R97, R100, R418). Browne-Vintners subsequently acquired some of the agencies (R101).

When the Browne-Vintners Company was formed, the partners were unwilling to disclose their interest in the company and for that reason the initial capital was sent to Canada to a man named Bower, who in turn returned the money to the United States and subscribed for stock of the company. The stock was issued in his name and was held by him for the partners, who were the beneficial owners (R25). Later this stock was transferred to and reissued in the names of Reinfeld's son-in-law, Norman Levin, and the latter's sisters (R111, R112). The authorized capital of the company was later increased and

stock for more than $2,000,000 was eventually issued. Of this, about $700,000. was issued in the name of nominees and the balance was held in the names of the actual stockholders (R28). It is not clear from the testimony, nor could Reinfeld say, which of the nominees held stock for particular beneficial stockholders. One White was a nominee (R115). Reinfeld was unable to say who was the real owner (R117). Silverman and Rubin, relatives of Reinfeld, were also nominees and Reinfeld could not identify the real owners (R120, R119). Newman was a nominee for $200,000. of stock (R558). Reinfeld, who owned stock in his own name, also was a nominee and did not know the names of the beneficial owners (R123). Cohen and Reinfeld arranged to have stock placed in the names of nominees for the real stockholders and it was Cohen who attended to the financial arrangements of the company and among the stockholders (R116, R123).

The situation was quite confused. For example, when Reinfeld was asked whether Levin was acting as "front man" when he acquired Bower's stock and for whom he was so acting, Reinfeld said, "Well, you couldn't just say for whom because the stock was not split up. There were stockholders and there were some stockholders through nominees and later on there were more nominees" (R111). In any event, it is undisputed that those who had an interest in the money that was originally sent to Bower retained their interest until the company was sold in 1940 (R113).

Reinfeld said that the undistributed assets of the partnership amounted to $250,000. and that it was this sum that was sent to Bower when the company was formed (R24). Kanengiser, who, according to Reinfeld, was in possession of the funds immediately before they were sent to Canada, and who was the one who advised the members

of their interest upon termination of the partnership, testified that the amount on hand and with which Browne-Vintners was formed was $469,000. and not $250,000. (R24, R345, R351). He said that an additional $31,000. was contributed by the partners at the inception of the company so that the starting capital was $500,000. (R348, R351, R355). Facher, who was one of the cashiers of the group, corroborated this (R417, R418, R429). A statement prepared by Cohen and which was marked D-9 in evidence also corroborates this (R968, R969). It is interesting to note that the Government did not produce the Browne-Vintners books to prove the initial capitalization of the company, nor did Levin who, with his sisters, received Bower's stock, testify in this case.

Reinfeld testified that Rutkin was not entitled to any share of the proceeds after the accounting since he was overdrawn $35,000. and that he had been so informed by Kanengiser (R22). Reinfeld therefore concluded that Rutkin had no financial interest in the initial stock which was purchased with the proceeds remaining in the partnership. Reinfeld so testified, although he did say that Rutkin had a 6% interest in the entire venture at the time the accounting was rendered (R21, R22). Kanengiser, who had prepared the accounting, testified that there was an open item of $35,000. when the partnership came to an end, consisting of expenses incurred by Rutkin and accounts receivable which Rutkin was unable to collect, that these items were discussed with Reinfeld and his family and other partners, with the result that Reinfeld and the others agreed to forgive this amount (R367, R368, R381). Thus, Rutkin was credited with a share of the moneys that went to form the initial capital of Browne-Vintners (R382).

In further contradiction of Reinfeld's denial that Rutkin had an interest in the company, Kanengiser testified that

he received from Cohen Exhibit D-9 and that he thereupon gave it to Rutkin (R343). Kanengiser had a 4% interest in the partnership amounting at the end to $18,773.74. He was asked to put up an additional $1,226. so that there would be an initial capital of $500,000. to start the company (R347, R348). He was not clear when he received the statement, at one time saying that it was in 1934 or 1935 (R349) and at another time that it was in 1937 or 1939 (R344). Rutkin said that he received it some time between 1934 and 1936 (R686). That exhibit was prepared by Cohen apparently when the capital was raised to $1,000,000. It shows (see upper left hand corner) that the original capital was $469,343.40. It also shows (see Jim R. on middle left side of exhibit) that Rutkin had a 6% interest in the original $469,343.40 and that to retain the same percentage in the new capital of $1,000,000., he was to pay to Reinfeld, who was to collect the same, the sum of $31,839.39, making his total interest at that time $60,000. The writing appearing in the lower right corner of the exhibit, showing percentage interests of the members of the Reinfeld group in $500,000. (one-half of $1,000,000.), is in Kanengiser's hand and was set down at Cohen's request (R360).

Exhibit D-9 shows that Kanengiser (K.) and Facher (J. F.) each had a $20,000. interest in the company. Both of them testified they had such an interest (R347, R421). Facher had increased his interest at Reinfeld's request (R420).

Reinfeld had maintained in his direct testimony that Rutkin's interest terminated when the partnership ended because he was overdrawn the $35,000. above referred to. He had testified that he and Kanengiser had absorbed Rutkin's interest (R95), a statement which Kanengiser denied (R370). Then, on cross-examination, Reinfeld was confronted with a form of assignment which Rutkin

had signed in 1936. He thereupon said that in 1936 Rutkin claimed that he had a 6% interest and was entitled to $60,000. and that after several months of disputes, he decided to recognize the claim, paid the money and took the assignment in the presence of Cohen (R175). Rutkin required the money for investment in a Florida hotel which he was going to operate in partnership with Jack Dempsey. Reinfeld denied that he had any financial interest in the hotel although he stopped there (R151). He said that of the $60,000., he gave a check for $15,000. or $20,000. and the balance in cash (R153). No such check was produced.

Rutkin, on the other hand, said that he and Reinfeld were partners in the venture with Dempsey (R674); that he was given not $60,000. but $120,000., one-half of which was Reinfeld's share and the other half of which Reinfeld loaned to him and that all of it was in cash (R674, R675). Cohen handed him the form of assignment which Rutkin thought was a receipt for the loan and then gave the entire sum in cash to him (R676, R677). As evidence of Reinfeld's interest in the venture, Rutkin testified that Cohen came to Florida at Reinfeld's request and set up the books of the company (R678, R679). The proposition was a losing one and Rutkin sold out his and Reinfeld's interest with Reinfeld's consent, after a year's operation (R679, R680). That interest was purchased by one Gaines for $60,000., cash on hand of $20,000. not forming a part of the transaction (R310, R311, R681). Of the $80,000. thus received by Rutkin, $40,000. was repaid to Reinfeld (R681). Reinfeld denied that he held any interest or paid more than the $60,000.

In support of Rutkin's testimony, Dempsey testified that he met Reinfeld before the Florida transaction and that Reinfeld told him he would be responsible for any debts or liabilities incurred by the hotel. The finances at the hotel were handled by Cohen, Reinfeld's accountant,

who was there part of the time and who had come down to set up the books and the financial structure (R324, R325, R326). Gaines, who purchased the interest, said Rutkin introduced Reinfeld to him as his partner, that he had offered to purchase the interest and that at a meeting held at the office of Browne-Vintners, Rutkin explained Gaines' proposal to Reinfeld whereupon Reinfeld instructed Rutkin to go ahead with the sale, saying that if it was all right with Rutkin, it was all right with him (R309 to R311).

Throughout the life of Browne-Vintners Company prior to its sale, Rutkin frequently was at its offices. Mrs. Thum, who was chief receptionist from 1934 to 1942, said that Rutkin came to the company's offices two or three times a week at times, although sometimes he was not there for many months (R515). Rutkin used all available offices that were not occupied by other people (R516). Pokrass, who was a large purchaser of liquors from the company, often saw Rutkin using many of the company offices on various occasions (R546). Bennett, who was with the company from February 1937 until March 1941, as national sales director, and then as vice-president, saw him at the company's offices and said that Rutkin did promotion work for the company (R336, R337, R339, R340). Some time in 1937, Reinfeld said that Rutkin was his partner (R337, R338). Joseph Davis, an original partner and secretary of the company, said that there were times when Rutkin would be around the offices every day and at other times he would not be there for a while (R454). Rutkin had the general use of the offices (R455).

The Sale of Browne-Vintners Company

In the latter part of 1940 Reinfeld received an offer for the stock of the company. The price offered was $7,500,000. net (R131). He said that he discussed the offer with Zwillman, Stacher, Harry and Joseph Davis, Cohen, Newman and White (R131), (although, as we have shown,

Newman and White were only nominees and owned no stock). He said that the meeting was held at the company's office and that he did not discuss the offer with them at any other place (R131). Then he said that he came to Newark to discuss the offer with Zwillman and Stacher, who did not come to the company's office (R132). At that meeting he told of the offer and asked the group whether they desired to sell, whereupon he was told that they did (R133). On cross examination his attention was called to a meeting held at the Park Central Hotel in New York. He acknowledged that such a meeting was held. He said that there were present Joseph and Harry Davis, Zwillman and Stacher but that Rutkin was not there (R133). It was at this meeting that the proposal of sale was made (R134).

Rutkin testified that he was present at the hotel meeting and that the consents of all present, including his, to the sale was requested by Reinfeld and given (R682 to R684). Joseph and Harry Davis corroborated that testimony. Harry Davis maintained an apartment for business purposes at the Park Central Hotel (R499). He said that a meeting was held at that apartment and that present were Reinfeld, Rutkin, Zwillman, Stacher, his brother and himself (R500). He said that Reinfeld spoke of the offer and recommended its acceptance. Reinfeld then asked each member present separately whether they wanted to sell and each one indicated that he did (R500). The sale resulted in Davis' receiving about $90,000 for his investment of $31,000 (R507). Joseph Davis testified that a meeting was held at his brother's apartment at the Park Central Hotel and that it was Rutkin who asked him to attend that meeting (R439). He corroborated his brother's and Rutkin's testimony that Zwillman, Stacher, Reinfeld, Rutkin and he and his brother were present (R439). Reinfeld spoke of the offer and then asked each one present individually, including Rutkin, whether he wanted to sell (R440). After the consents were given, the company was sold for $7,500,000. (R27, R440).

The testimony given by the Davis brothers was of extreme importance, since it demonstrated that in 1940, Rutkin had a financial interest in the company and that his consent to the sale was required. This was in opposition to Reinfeld's contradictory testimony that Rutkin never had an interest in the company and that if he did, it had been sold in 1936. It was unfortunate, therefore, and hurtful to the defendant that the Court stated in the presence of the jury, when an objection was made to an improper question, that it was not impressed by either Harry Davis or his brother. When an exception was taken to such remark, the Court said that he was stating his opinion of the witness (R503, R504).

The Payment of Income Taxes on the Proceeds of Sale

In addition to arranging for nominees, Cohen himself acted as a nominee (R123, R199). When the stock was sold, Cohen went to the other nominees and received from them the proceeds of sale less the amount which they had paid for income taxes (R205). For example, Newman, who owned no stock, but acted as nominee for stock which brought more than $200,000., said that the proceeds were deposited in his bank account and that he eventually paid the proceeds to Reinfeld and Levin in cash at different times (R558). Newman did not deposit the check personally. Cohen took the bank book and check, made the deposit and over a period of about six months the cash was withdrawn (R562, R563). An income tax was paid on it (R558). About $6,600,000. was distributed to stockholders and approximately $900,000. was held in reserve in a contingency fund (R126, R127). Reinfeld personally received in the neighborhood of $1,400,000. and the members of his family received another $1,000,000. (R126). The capital gains tax was paid on all of the stock of the company (R129). Thus, moneys that were paid to Rein-

feld's brother-in-law, Holtz, who did not hold stock in his own name, came to him tax paid and Cohen so advised him (R239). Cohen also attended to the payment of taxes on all the profits of the sale and so advised Reinfeld (R190, R205, R206).

Reinfeld's Payment to Rutkin

The payment to Rutkin of $250,000. in 1943 resulted from a series of meetings and conferences which were held starting in December, 1942 (R50). Reinfeld says that those meetings were preceded by threats made by Rutkin. He testified as follows: Late in October or early in November 1942, Rutkin came to his office and started a conversation by saying, "Where is my money?" (R40). When asked what money, Rutkin said that all had made a lot of money, "What about me?" (R41). He then said that he was in debt and that he would require $100,000. When told that it would not be given to him, Rutkin, holding his hand in his pocket, said that he would kill Reinfeld if the money were not given to him within three days and then ran out of the office (R41). Several weeks later, says Reinfeld, Rutkin pushed past Reinfeld's secretary and again threatened Reinfeld if money was not given to him. This time the demand was $150,000. (R43). On his direct examination, Reinfeld said that in reply to the demand, he told Rutkin he would pay him the money (R43). On cross examination he said that when the demand for $150,000. was made, he told Rutkin he would not pay him the money (R164).

Reinfeld at that time was living at the Pierre Hotel. About a week after the second demand, Rutkin called him, apologized for his conduct and asked permission to come to Reinfeld's rooms. They had some drinks and just as Rutkin was leaving, he pulled out a gun and told Reinfeld to get him $200,000. or he would kill him. He then slammed

the door and left (R43). On cross examination Reinfeld testified that Rutkin pulled out a gun as he was leaving and told Reinfeld to get money for him but did not say how much money (R166) although he later said the demand was for $200,000. (R167). Although he was frightened and feared that Rutkin would fulfill his threats, he made no report of the incident to anyone (R167). Several weeks later he received a telephone call from Rutkin who said that he was ill at the Warwick Hotel in New York and started to apologize (R44, R168). Although he was still afraid, he felt sorry for Rutkin and went alone to Rutkin's rooms (R44, R169). He said that Rutkin apologized, said he was in debt and asked for money (R44). No threats were made there. Reinfeld left and returned with $5,000., which he gave to Rutkin. Several hours later he gave him another $5,000. (R44, R170). He did not see Rutkin again until two to four weeks later when he unexpectedly met Rutkin in the basement room of Holtz at a meeting with Zwillman, Stacher and others (R45).

To lend credence to his testimony that he had been threatened, Reinfeld said when Rutkin first threatened him, he became so upset that he called off an appointment which he had to close the purchase of the controlling interest in the White Rock Company (R41). This was late in October or early November, the day of the first demand (R40, R41). The negotiations for that purchase had been going on for several months, with one Sam Pass, acting as a broker (R160, R534). Reinfeld had met Pass through Rutkin (R161). Pass refuted Reinfeld's testimony. He testified at first that he met Reinfeld in the fall of 1943 and started negotiations in September 1943 (R535, R542). The negotiations lasted about six months at the end of which time he said Reinfeld called off the deal, saying that he did so on the advice of his bankers (R536, R537). Pass was not well received by the court. See pages R540, R541, R725. It later developed that nego-

tiations had started in the Fall of 1942 rather than the Fall of 1943, but in any event, the deal was not called off until six months after October, 1942, or some time in the Spring of 1943 (R721, R723, R727). Even the witness, Owen, who was called in rebuttal, said that he introduced Pass to Reinfeld in the latter part of 1942 (R910, R911) and that he worked on the transaction with Reinfeld (R910). Reinfeld, on the other hand, never said that he conferred with Owen and that Pass came to him without introduction (R161). It is noteworthy that the prosecution did not prove through documentary evidence, the date on which the sale was called off.

Reinfeld said that the meeting in the basement room came about when Davis told him that Zwilliman wanted to see him (R45). Rutkin says that he caused the meeting to be held (R699) and that it came about in the following manner: Several days before the meeting, which he fixes as December 4th, he received Exhibit D-11 from Reinfeld (R696). That statement indicates an indebtedness of $81,259.10 and was prepared by Cohen (R695). Rutkin explains the exhibit by saying that he had a 3% interest in the St. Pierre-Miquelon enterprise; that his share, amounting to $100,000, was invested for him in Browne-Vintners with a resulting profit of $164,559.10 (R705, R706). Of the $100,000, only $75,000 was returnable, Reinfeld claiming that he had applied the difference against expenses (R705). Moneys were advanced to Rutkin, which he says he received on account of his interest in Browne Vintners (R698). Rutkin testified that Reinfeld told him that $81,259.10 was the balance which he was then holding for Rutkin and was the amount due him when D-11 was delivered (R696, R697). Rutkin disputed the amount due, claiming that Reinfeld owed him $267,000 (R710). Included among the expenses which Reinfeld charged against him was $30,000 for taxes which

represented taxes paid by Reinfeld and which are hereinafter discussed. In rebuttal Reinfeld denied that he owed the money shown on the statement, that he had given the statement to Rutkin and that he had ever paid the amounts totalling $125,000 shown on the statement as having been paid (R878, R880). He had previously testified, however, that on various occasions he had given moneys to Rutkin, namely $2,000 or $3,000 in 1940 (R37, R38), $10,000 in 1941 (R38), and $10,000 at the Warwick Hotel. He testified that other than the $250,000 and the $60,000 paid in 1936, he had given Rutkin throughout the years starting in 1935, sums aggregating $40,000 (R179, R181). At his examination before trial in the New York case, he testified that he had given Rutkin sums which could have aggregated $200,000 (R182). This testimony corroborates Rutkin's statement that he had received substantial sums of money, as shown in Exhibit D-11.

Meetings were held on a Saturday and the following day. Although Reinfeld testified that he was merely told that Zwillman wanted to see him, he brought Cohen to the meeting which started Saturday morning. There were present, according to Reinfeld, he, his brother Saul, Holtz, Zwillman, Stacher and Rutkin (R45). He held no conversation with Rutkin that morning (R46). Reinfeld testified on the next day of trial (R49) that after a conversation with Zwillman on Saturday morning, Rutkin arose and said he would kill Reinfeld and his family if he did not get the money (R50) and that he made the statements in the presence of all those hereinabove named, except the accountants, who he thinks were asked to leave the room (R51). Rutkin said nothing else (R50). That afternoon a second meeting was held. Reinfeld's testimony concerning the occurrences at that meeting is contradictory. The morning meeting lasted about an hour and it was then suggested that Samuel Kessler, an attorney well known to both sides to the controversy, be called (R60). Zwillman,

Stacher and Rutkin returned that afternoon with Mr. Kessler (R61), with the latter appearing for Zwillman and Stacher. Reinfeld had previously paid an income tax deficiency of $400,000, and had expended about $80,000 for fees and expenses in connection with the settlement of his taxes (R30). Reinfeld had charged half of that sum to Zwillman and Stacher and had withheld from their share $240,000 of the moneys received by him from the sale of Browne-Vintners. Zwillman and Stacher demanded a return of that sum and Reinfeld agreed to pay them $225,000. Reinfeld said that that agreement was made when Mr. Kessler, after hearing both sides, said that the money should be returned (R61). Reinfeld also agreed to pay $138,000 which he says he had held in the $900,000 contingency fund so that the amount he was to pay to Zwillman and Stacher was $358,000 (R31, R204, R215). He then said that after the agreement to pay had been reached, Mr. Kessler turned to him and said, "How about Mr. Rutkin?", whereupon Reinfeld said, "Well, what is his claim?" (R47). He then says that Mr. Kessler said that he should go into another room with Rutkin and give him some money since they had been friends for a long time (R47). He then went into another room and asked Rutkin what he wanted. Rutkin asked for $500,000. Reinfeld said that he had previously demanded $200,000, whereupon Reinfeld agreed to pay $250,000 when Rutkin said he would accept that amount (R47). This meeting was said by him to have occurred on Saturday afternoon (R46).

His testimony on cross examination varied from the above. He said that he agreed to pay the sum of $358,000 to Zwillman and Stacher on Saturday (R221). A few moments before, he said that he had made that agreement on Sunday (R215). Earlier, he had said that the contingency fund was discussed on Sunday (R204) although it is clear from his direct examination that the contingency fund was a partial basis of the settlement made with

Zwillman and Stacher (R31). Whether or not the settlement with the others was made on Saturday and Sunday, it is clear from Reinfeld's testimony that before he went into a room to make a settlement with Rutkin, he had already agreed to pay the others the $358,000 (R221).

Reinfeld further testified as follows: Other claims were made by Zwillman and Stacher. It was their contention that he had profited through the sale to Browne-Vintners of bulk whiskey and that he had used dividends for the purchase of stock on the eventual sale of which he had earned large profits (R192). That matter was discussed with no settlement reached. On the following Monday, he was told that Mr. Kessler wanted to see him and when he arrived there he found Rutkin and Stacher sitting with Mr. Kessler (R227, R255). Mr. Kessler announced that the men were demanding more money, that he then stated he wanted his own attorney, left and went to David Popik, his regular attorney, after which Mr. Popik retained Frederic M. P. Pearse and Max Mehler to appear for Reinfeld (R255, R257). He told Mr. Popik of the previous occurrences and was advised by him to see the prosecutor (R56). He did not tell Mr. Pearse and Mr. Mehler that Rutkin had ever threatened him (R257).

Reinfeld's brother-in-law, Holtz, was the only other witness who testified concerning threats. Neither Samuel nor Sol Reinfeld, brothers of the principal witness, who, Holtz says, were present when the threats were made, gave any testimony (R229). Holtz testified briefly as follows: He had been a partner during the prohibition era and was a stockholder in Browne-Vintners. Some of his stock was held by nominees (R236) and the money that he received from them through Cohen was tax paid (R239). At the meeting of Saturday morning, Rutkin asked the accountants to leave the room and threatened to kill Reinfeld and his family "if I don't get my money" (R231). On

cross examination, he testified that Rutkin made the threats, "if he doesn't get his money that he is claiming" (R244). Rutkin returned that afternoon with the others and caused no trouble or disturbance (R248). Holtz did not object when Rutkin returned the next morning with the others (R249). Some weeks later, while Joseph Reinfeld was in the hospital, Rutkin called and said that he hoped nothing happened to Joe because "his family is going to be responsible for that settlement" (R250).

Rutkin's version of the meetings at Holtz's home and of the final settlement differed from that of Reinfeld's. His testimony was corroborated in a number of respects by the attorneys who appeared in the case. Rutkin's testimony concerning this was as follows: When he received Exhibit D-11 from Reinfeld as above related, *supra*, p. 17, he complained that the balance owing was much greater (R695). He thereupon suggested to Zwillman and Stacher that their accountant look into the case and that is how the meeting came about (R699). The first meeting was attended by the three Reinfelds, Holtz, Cohen, Popik, Goldstein, Rutkin, Stacher and Zwillman (R694). Lentz, whose presence at the trial Rutkin unsuccessfully tried to obtain (R4), was also present (R694). At the first meeting, a claim was raised that the Cointreau Company had not been assigned to Browne-Vintners but was retained by one of Reinfeld's companies (R694). Cointreau, Ltd. was one of the companies in whose favor a release was eventually executed (Exh. D-8, R967). Reinfeld and Rutkin went off to a bar in the room where Reinfeld said that he had made honest mistakes (R699) and then stated that he owed Rutkin about $260,000. (R700). Actually, Rutkin demonstrated that there was $267,000. owing (R710). Mr. Kessler was not present that day but did appear on the following day when the same parties were present, with the exception of Lentz (R700). At that meeting, Kessler

asked Reinfeld what Rutkin was doing there and Reinfeld replied that he had the same claim as Kessler's clients (R700). Some time after Reinfeld had allowed Zwillman and Stacher their claim for moneys withheld by Reinfeld for his personal income taxes, Reinfeld allowed Rutkin the sum of $30,000. which he had charged to Rutkin on the same item (R701). Rutkin did not go into another room with Reinfeld nor did he make any threats (R702).

Rutkin was also present at the subsequent meetings held at Kessler's office (R702). At the final meeting held there, Reinfeld agreed to pay $358,000. to the others, whereupon Rutkin said, "How do I stand. How about me?" (R703). Kessler then said that since Rutkin and Reinfeld had been friends for so long a time, they should go into another room and discuss their differences (R703). When they entered that room, Reinfeld said that Rutkin should have the same amount his brothers had received and because of the payments previously made, there was a balance owing of $250,000. Rutkin protested that Reinfeld had previously named a larger sum. Reinfeld said that was a mistake and offered $250,000., which Rutkin accepted. They came out of the room and Reinfeld announced that Rutkin was to receive $250,000. whereupon they shook hands (R704). Zwillman then asked whether the money was tax paid. Thereupon Reinfeld or Cohen produced a sheet showing that all taxes on the profits made on the sale of Browne-Vintners stock were paid and said "Don't worry about it, it's all tax paid" (R704, R705).

Pearse, Kessler and Mehler all testified. Mr. Pearse, called as a witness by the Government, said he had been retained early in 1943 by Mr. Popik, who had been negotiating with Mr. Kessler the claims made by Zwillman and Stacher (R295, R296). He and his associate, Max Mehler,

had carried on negotiations for several months before a settlement was arrived at. Meetings had been held with Mr. Kessler which were attended by Rutkin (R296), although Rutkin's claims were not discussed. He had been told by Reinfeld of the meetings held on Saturday and Sunday and of Reinfeld's agreement to pay a sum of money to Rutkin. His retainer was to negotiate the additional claims that were made after the conferences in Holtz's home (R298). He was told by Reinfeld that he was not called upon to negotiate as far as Rutkin was concerned but that if the claims were settled, he was to pay Rutkin $250,000 (R298). Reinfeld never told him that he had been threatened or intimidated by Rutkin (R306). The amount that Reinfeld eventually agreed to pay was the same amount that he had agreed upon at the meeting in Holtz's home (R299). He was present when the money was paid in 1943 (R300). Although the following testimony was struck by the Court, we refer to it because of its importance and because we feel that it was erroneously removed. Mr. Pearse testified that in conferences with Cohen he was assured by Cohen "that any money that was paid over to either party was, I don't know what you would call it, capital gains tax or whatnot. In other words it was free and clear" of taxes (R305). We contend that that evidence was admissible in view of all of the testimony related above that Cohen handled all of the details of investments by stockholders and the payment of taxes by them. It will be recalled that both Holtz and Reinfeld testified that they had been assured by Cohen that their moneys were tax paid (R206, R239).

Mr. Kessler, who has been a member of the bar for forty years, and has served as an Assistant United States Attorney, Assistant Prosecutor and United States Commissioner, called by the defense, testified that he attended only one conference at the home of Mr. Holtz and that

took place on a Sunday in December 1942 (R458, R459). He had been requested by Stacher early that morning to attend at Holtz's home (R460). When he arrived with Stacher he found Reinfeld, two or three of his brothers, Holtz, Cohen, Rutkin, Zwillman and Popik present (R459, R460). He was asked by Reinfeld to arbitrate a controversy which had arisen between him on the one hand and Stacher and Zwillman on the other, concerning the latters' dissatisfaction with the amount of money they had received from the liquidation of Browne-Vintners. He asked Reinfeld to identify those present. When Reinfeld turned to Rutkin, he said, "Rutkin is here. He has the same claim as the claims that Stacher and Zwillman have and he says that he didn't get all his money". (R462). Mr. Kessler refused to act as an arbitrator and undertook to represent Stacher and Zwillman whose claims were to be discussed before Rutkin's (R462, R463). The claim for the amount withheld by Reinfeld for taxes was first discussed, the contentions being made on Reinfeld's behalf by Popik and Cohen (R463). After discussion, Reinfeld agreed on a payment on this item (R464). The contingency fund was next discussed as well as a withholding by Reinfeld of moneys that he was obliged to pay to the State of New York for income taxes (R465). Various items of expense were next considered, the amounts to be verified at a later time (R466). The balance of the morning was devoted to a claim that Reinfeld had invested $700,000 in Browne-Vintners with the resulting profit to him, when in fact the moneys should have been borrowed (R467). The result of this investment was to decrease the interest of Stacher and Zwillman in the company (R466). The following week, and as a result of the arrangements made at the Sunday meeting, Cohen brought over records to Mr. Kessler's office (R469). A further meeting was held, with all of the parties, ac-

countants and attorneys present (R469, R470). New contentions were made. In going over the records produced by Cohen, it was discovered that $500,000 additionally invested by Reinfeld came from the profits of a sale made by one of Reinfeld's companies of bulk whiskey to Browne-Vintners (R471). Reinfeld was informed that the claim amounted to about $1,000,000 and that perhaps he should have additional counsel (R473). The meeting was then adjourned and within the next two weeks, Mr. Kessler was informed that Reinfeld was now being represented by Pearse, Mehler and Popik (R473). Mr. Kessler denied that he had met with Reinfeld at his office on the Monday following the Sunday meeting as Reinfeld had testified (R473).

Conferences, always attended by Rutkin, were then held between the attorneys in the presence of their clients and the accountants (R474). At a final meeting held at Mr. Kessler's office, Reinfeld said that he would not pay any more than he had agreed to pay at Holtz's home, whereupon Stacher and Zwillman said that they would not pursue the matter further (R475). Following that statement, Rutkin then said, "Now, what about my claim?" It was at this time and at his office, says Mr. Kessler, that he suggested to Reinfeld that he go into the library with Rutkin where he could probably settle Rutkin's claim without the help of lawyers since he had already heard the discussion of the claims (R476). Reinfeld and Rutkin then entered the library, remained there for about ten or fifteen minutes and when they came out, Reinfeld said that he had settled his differences for $250,000 and that they were shaking hands on it and that the parties thereupon did shake hands (R476). Zwillman then asked if the moneys were tax free. Reinfeld said they were. Cohen also said that all the taxes had been paid and pulled out a sheet which indicated that all capital gains taxes had been paid (R477). There was no request for payment

by cash. A check was requested. Reinfeld said he would pay in cash as soon as he could collect the money (R478, R479). Mr. Kessler testified that the events occurred as above related by him. He said that Rutkin and Reinfeld had not left Holtz's basement room during the Sunday meeting and that he did not tell Reinfeld at Holtz's home to take Rutkin into another room and give him some money.

Mr. Mehler, called by the defense, testified briefly (R625 to R631). He said that he was present at the office conferences above adverted to and that at the last meeting Reinfeld agreed to pay the amount he had previously agreed upon at Holtz's home (R629, R630). When Zwillman and Stacher stated that they would accept the settlement previously arrived at, Rutkin said, "How about me" or "words to that effect"; that Reinfeld and Rutkin then went into another room at Mr. Kessler's suggestion and when they returned Reinfeld said he was going to pay Rutkin $250,000 (R630, R631).

Some time before May 11, 1943, Mr. Popik asked Reinfeld for the money that was to be paid to Rutkin, Stacher and Zwillman (R52, R53). On May 10, 1943, Mr. Popik sent to Mr. Kessler a form of general release which he had prepared and which he said he intended to use in connection with the closing which he was trying to arrange for the next day (Exhibit D-10, R970). On May 11, 1943, Mr. Popik, together with Mr. Pearse and Holtz, came to Mr. Kessler's office with $608,000.00 in cash, which was paid to Zwillman, Stacher and Rutkin (R300, R480). The release, prepared by Mr. Popik, was then executed by the three payees (R480, R967, Exhibit D-8) and was witnessed by the three attorneys. The release runs in favor of Reinfeld, his brothers, Holtz, other relatives, Browne-Vintners Company and Cointreau, Ltd. Neither at the time of the payment, nor at any other time, did Reinfeld

deliver to Rutkin a general release, or any other type of release with respect to the $250,000.00, which Reinfeld paid to Rutkin on May 11, 1943.

Reinfeld's Treatment of Other Stockholders

Kanengiser, Facher, Arnould and Cost or Costy were partners of Reinfeld during the prohibition era and had a financial interest in the net proceeds remaining after liquidation of the partnership. Reinfeld acknowledged that Facher's stock was held in the name of a nominee and so was Kanengiser's (R120). In fact, Reinfeld said that Kanengiser was one of the persons who acquired Rutkin's interest (R194, R195). In addition to their original interests, Facher and Kanengiser each gave Reinfeld sums slightly in excess of $1200 to increase their respective interests to $20,000 each (R358, R420). Both testified that they received none of the proceeds of the sale of the stock although they requested it (R360, R423). Reinfeld's excuse for non-payment was that most of the money had been used for expenses and nothing remained for them (R360, R423). Arnould, too, said that he received none of the proceeds of sale either for himself, or for Costy, who was then deceased (R570, R571).

The New York Litigation

In 1948, Rutkin started suit against Reinfeld in New York for $22,000,000 (R281). That case has not yet been tried (R280). Reinfeld testified that the first time he ever told about the threats was during his examination before trial although he says he did mention the threats to his family before the meeting at Holtz's home (R281). No demands have been made of him by Rutkin since the payment in 1943 except such demands as are set forth in the complaint in the New York suit (R282, R283).

ARGUMENT

POINTS 1 and 2

1. Is money secured by extortion taxable income within the meaning of 26 U. S. C. 22(a)?

2. Is money secured by extortion taxable income within the meaning of 26 U. S. C. 22(a) because the extortioner asserts a patently spurious claim thereto?

By motions for judgment of acquittal (R315, R914, R954), and by exceptions to the charge (R936), trial counsel for petitioner promptly and clearly made known to the trial Court the contention that the income which is the subject of this indictment was not taxable under the decision of this Court in *Commissioner* v. *Wilcox*, 327 U. S. 404. The trial Court ruled that the *Wilcox* case was not applicable and denied the motions (R321, R322, R915, R916, R956). The denial of the motions, and error in the charge on this point, were assigned as error in the Court of Appeals, which affirmed the conviction.

The taxability of the income admittedly received by petitioner was the chief issue at the trial. If the trial Court's rulings on the motions, or its charge, were erroneous in law, reversal must follow.

At the conclusion of the government's direct case, the evidence presented by it in its effort to prove the manner and reason for the payment of $250,000.00, by Reinfeld to Rutkin, was summarized by the trial Court as follows:

> "But here you have uncontroverted and uncontradicted, so far, a situation where the defendant is alleged to have threatened the man with violence and used a gun in the threat, and threatened to kill him and his family, and according to the testimony so far adduced, uncontradicted and uncontroverted

so far, the money was paid over not for any other purpose except to assuage the murderous instincts or threats of the defendant, and that he received the money and that he did not report it and did not pay any income tax on it. As I say, it is only the Government's case so far and I daresay that your associate counsel will very ably introduce evidence to controvert that; but certainly on the situation as it stands now, there is a distinct question for the jury and I shall deny your motion. You may have an exception." (R321-R322)

Under the *Wilcox* case, the existence of a taxable gain is conditioned upon two criteria:

(1) the presence of a bona fide legal or equitable claim to the alleged gain.

(2) absence of an unconditional obligation to repay or return that which would otherwise constitute a gain.

Assuming the trial Court's summary, *supra*, to be accurate, petitioner received money as the result of a criminal tort, without the existence of a bona fide legal or equitable claim thereto. The acts ascribed to him by the trial Court, in its summary, constitute the crime of extortion under the statute law of New Jersey, where the money was paid and received (N. J. S. A. 2:127-4), and under the case law of both New York and New Jersey, as well as many other jurisdictions. The crime is complete when money is secured by threats to do bodily harm, if the recipient has no bona fide legal or equitable claim thereto. *People* v. *Griffin*, 2 Barb. 427; *Loftus* v. *State*, 19 Atl. Reporter 103; *Cutter ads State*, 136 N. J. Law 125; *McMillen* v. *State*, 60 Ind. 216; *State* v. *Hammond*, 180 Ind. 81; 41 Am. Rep. 791; *Mann* v. *State*, 47 Ohio St. 556, 11 L. R. A. 656.

The common meaning of extortion is the same. Extortion is the "act or practice of obtaining anything from a person by illegal use of fear, whether by force, threats

or——". *Webster's New International Dictionary, Second Edition, Unabridged* (1942), cited with approval in *U. S.* v. *Sutter*, 160 F. 2nd 754, 7 Cir., 1947, at page 756.

If, in addition, the petitioner at the time of receipt of the money, was under an unconditional obligation to return or repay the $250,000.00, it did not, under *Wilcox*, represent a taxable gain. The answer to this question is found not in the transcript, but in the law as it properly applies to the facts summarized by the Court. The answer was supplied by this very Court which said:

> "Where money is wrongfully and illegally exacted, it is received without any legal right or authority to receive it; and the law at the very time of payment, creates the obligation to refund it." *Bank of U. S.* v. *Bank of Washington*, 6 Pet. 6, 8 L. Ed. 299, 304.

See also *McKnight* v. *Commissioner of Internal Revenue*, 127 F. 2nd 572, that when monies are unlawfully received, the law immediately and absolutely fixes upon the receiver the duty to account for and to repay the value of what is taken. No action or election by the owner is necessary.

To this very day, one who receives money through extortion is, like an embezzler, under the unqualified obligation to return or repay the same, 48 C. J. 741, Section 294, and cases cited thereunder; *Miller* v. *Eisele*, 111 N. J. Law 268. In New Jersey, where the money was received by petitioner, a person from whom money is extorted may replevy the same as soon as it comes into the hands of the extorter. N. J. S. A. 2:73-1 and 2.[1] *Cf. Commissioner* v. *Wilcox, supra.*

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[1] "If the goods or chattels of any person be taken and wrongfully detained, the sheriff, by a writ of replevin shall cause such goods to be replevied and delivered * * *."

"Any unlawful detention of goods and chattels from their lawful owner or the person entitled by law to the possession thereof, shall be deemed an unlawful taking for the purpose of supporting an action of replevin * * *."

Under the summary of the trial Court set out above, and under applicable statute and case law, petitioner received the $250,000.00, without the existence of a bona fide legal or equitable claim, and under an unconditional obligation to return the same. The income was, therefore, not taxable under the twin criteria outlined by *Wilcox*. The trial Court's refusal to grant petitioner's motion for judgment of acquittal at conclusion of Government's direct case was, therefore, a clear cut error of law for which the Court of Appeals should have reversed.

As opposed to the trial Court's summary of the Government's evidence, to the effect that petitioner had received the $250,000.00, without the existence of any bona fide legal or equitable claim of right, the Court of Appeals sustained the conviction upon the theory that from the evidence the jury would have been justified in concluding that the petitioner had received the money with "a *semblance* of a bona fide claim of right." This finding of the Court of Appeals was predicated upon the testimony of the witness Reinfeld, that the petitioner had asserted a claim to an interest in the stock of the Browne-Vintners Co., Inc. This, despite Reinfeld's testimony that petitioner's asserted claims were, to petitioner's knowledge, without basis in fact. The appropriateness of sustaining a conviction upon a theory directly contrary to that upon which the Government relied for conviction at the trial, and as to which the jury was completely uninstructed, is discussed later in Point IV of this brief.

The *Wilcox* case and *U. S.* v. *Lewis*, 340 U. S. 590, both predicate taxability under Section 22 (a) upon the *existence* of a bona fide legal or equitable claim. There is nothing in the rationable of the *Wilcox* case or *Lewis* case which warrants substitution of "asserted" for "existence." Furthermore, neither the Government, nor the Court of

Appeals, contends that the claim which petitioner asserted was bona fide. We are not here dealing with a bona fide claim which later was learned to be a mistaken one.

Both *Wilcox* and *Lewis* predicate taxability on the bona fides of the existing or asserted claim. In the *Lewis* case, the Court found the income taxable because

> "Respondent had at all times claimed and used the $22,000.00, unconditionally as his own, in *good faith*, though 'mistaken' belief that he was entitled thereto." (*U. S.* v. *Lewis*, 340, 590, 591) (Italics ours.)

In that same case, this Court said:

> "And in Commissioner v. Wilcox, *supra*, we held that receipts from embezzlement did not constitute income, distinguishing North American Oil on the ground that an embezzler asserts no 'bona fide legal or equitable claim.'"

The quotation marks and emphasis which this Court in this last quoted phrase gave to the words "bona fide" legal or equitable claim, are to us conclusive that the existence or assertion of a spurious or baseless claim, as distinguished from a bona fide claim, will not render income taxable under Section 22 (a).

The Court of Appeals has approved the conclusion that extorted funds are taxable if the unlawful demands of the extortioner are accompanied by a spurious claim or demand, asserted in bad faith. We agree with the expression of Judge Hastie in the dissent below, that disapproval is required by the reasoning of this Court in the *Wilcox* and *Lewis* cases.

> "So far as we are advised, no court has gone so far as to decide that the fact that the taxpayer, at the time he received a sum of money asserted a

claim thereto requires tax officials to include that sum in the taxpayer's income for the year he received it, though it was then apparent to any informed person that that claim was wholly unfounded * * *."

"Tax officials are not required to treat as income money received by a taxpayer when under well settled law, his receipt of it has the effect of obligating him unconditionally to pay that money to another." *Commissioner* v. *Turney*, 82 F. 2nd 661, 662.

The Court of Appeals has further distinguished the instant case from *Wilcox* for the reasons set forth in the following excerpt from its opinion.

"* * * there is not the slightest hint in the record that Rutkin ever had or has such obligation. Reinfeld, after agreeing to giving the $250,000.00 to Rutkin, did cause that sum to be turned over to him and took from him a general release. Reinfeld, the owner of the funds, participated in what he designates as their misappropriation by his own conscious acts. Obviously, as a result of that transaction, Rutkin at that time possessed a colorable claim of title to the money. This has never since been challenged. Reinfeld has unmistakably considered the $250,000.00 to be Rutkin's property. He has left Rutkin in undisputed possession of it for the last eight years and has permitted the statute of limitations to expire on whatever right he might have had to reclaim the money."

It is respectfully submitted that the very first sentence of this quotation indicates the point at which the Court of Appeals fell into error. The question of whether or not Rutkin had a definite unconditional obligation to repay or return the funds is not to be found in the record but in the legal principles applicable to the fact conclusions which the jury was obliged to reach in order to convict.

More than 100 years ago, the Supreme Court of the United States said, "Where money is wrongfully and illegally exacted, it is received without any legal right or authority to receive it; and the law, at the very time of payment, creates obligation to refund it. A notice of intention to recover back the money does not, even in such cases, create the right to recover it back; that results from the illegal exaction of it, * * *." (*Bank of U. S.* v. *Bank of Washington*, 6 Pet. 6, 8 L. Ed. 299, 304). In the accompanying note (starting at p. 299 of the Law Ed.), the following language is particularly pertinent:

> "If one man has obtained money of another through the medium of oppression, * * * extortion * * *, such money is in contemplation of law, money received for the use of the injured party, it is not the money of the wrong-doer, and he has no right to retain it. The law implies a promise from him to return it to the rightful owner."

To the same effect is *McKnight* v. *Commissioner of Internal Revenue, supra,*

That Reinfeld participated in the misappropriation of the $250,000.00 by his conscious acts cannot confer upon petitioner even a colorable claim of title. Both a lender and the victim of a robbery part with possession of money by their conscious act, yet it cannot be suggested that in such instances the money is taxable under Section 22 (a), to the borrower or robber. Only when the conscious delivery of money or personal property is the result of a voluntary act, is any degree of title conveyed. Reinfeld's delivery of the money was conscious, but it was certainly not voluntary. Where a payment has been obtained by extortion or when made upon a wrongful demand, to save the party paying from some great or irreparable mischief or damage, such payment is not voluntary. *Cockle* v. *Maxwell*, 3 Blatchf. 413; *Tutt* v. *Ide*, 13 Blatchf. 249; *Chicago* v.

Northwestern Mutual Life Insurance Co., 218 Ill. 40, 1 L. R. A. (N. S.) 770. In the instant case, Reinfeld's conscious act was involuntarily induced by the desire to avoid the result of the illegal threat. The involuntary delivery is what distinguishes this case from situations in which some degree of colorable title passes to a wrong-doer, as in cases of obtaining money under false pretenses. *Southern Pac. Co. v. Bank of America*, 23 F. 2nd 939.

As illustrated in *Bank of United States* v. *Bank of Washington*, and the accompanying note, *supra*, Reinfeld's failure to dispute petitioner's possession of the money does not alter the unconditional obligation imposed upon the petitioner by law to return or repay the money. That obligation arose at the exact moment the money was wrongfully exacted. No notice of election to recover it back was necessary to create the obligation, and no inaction on the part of Reinfeld could cancel or void the obligation. Had Reinfeld executed a release in favor of the petitioner, at the time the money was paid over, or at some other time thereafter in the year 1943, the situation might be otherwise. The lapse of time cannot make a taxable gain for the calendar year 1943 of that which was not taxable for the calendar year 1943. *McKnight* v. *Commissioner of Internal Revenue*, *supra*.

If from the inaction of Reinfeld and the passage of time, a form of condonation may be implied, as was theorized by the Court of Appeals. The exact point in the elapsed eight years at which this change took place would then determine the incidence of the tax. There is no proof that such condonation and a resultant change in the taxability of the $250,000.00 occurred in the calendar year 1943. It must further be remembered that condonation was never an issue at the trial, and that the jury was entirely uninstructed on this point. This alone would require reversal and the award of a new trial. *Bollenback* v. *United States*, 326 U. S. 607.

By reason of the foregoing, it is petitioner's contention that the income which is the subject of the instant indictment, was not taxable under the doctrine of the *Wilcox* and *Lewis* cases; that, if under any theory, the aforesaid income is taxable, the case did not go to the trial jury upon appropriate instructions as to such theory.

POINTS 3, 4, and 5

3. Did the trial Court err in refusing to grant a motion to direct a judgment of acquittal made at the conclusion of the Government's direct case?

4. May a Court of Appeals properly affirm a conviction upon a new finding of fact, when the trial jury was entirely uninstructed on the law to be applied to such finding?

5. Did the trial Court commit reversible error in charging the jury incorrectly in a specific instruction on a vital issue, and in refusing petitioner's request to give the jury a lucid statement of the relevant legal criteria on that same issue?

The defendant's trial counsel, in making requests to charge to the trial Court, included the following request No. 29, which the Court refused to charge:

> "It is admitted that the capital gains tax on the sale of all the Browne-Vintners stock was paid, and, therefore, if the money which Rutkin received came to him as a result of his interest in Browne-Vintners stock, it was not taxable, he was under no obligation to report it in his income tax return for 1943, and he must be acquitted. Even if you believe Rutkin made threats to Reinfeld and that these threats produced the money, if the money was in payment of Rutkin's interest in the Browne-Vintners stock, he should be acquitted." (R949)

It is submitted, for the reasons following, that the refusal of the Court to make the charge in the language as requested, or the substance of the request in any language, was prejudicial error.

Rutkin in his defense claimed the $250,000.00 payment from Reinfeld as of right as Rutkin's derivative share in the tax paid profits and return of capital in the Browne-Vintners venture. It is conceded that all income taxes on the Browne-Vintners gains had been declared and paid to the Government by nominees and the beneficial owners of stock were not required to pay any further income tax on the mentioned profits.

The Government, while making this concession, nevertheless prosecuted the petitioner on the theory that the monies he received from Reinfeld were Reinfeld's personal funds and did not represent petitioner's derivative share of the Browne-Vintners sale. The Government contended that the funds were paid purely as a result of threats petitioner made to Reinfeld without any semblance of a bona fide claim of right to the monies. In charging the Jury, the trial Court gave instructions which presented a sharp dichotomy: leaving them the choice of acquittal, if they found that petitioner was entitled to the fund as of right and secured the money without threats, or of guilt, if they found that the payment was made as a result of threats. The instructions precluded consideration of an equally justifiable hypothesis for acquittal as set forth in the refused request No. 29, that petitioner was rightfully entitled to the money but enforced payment to him by the means of threats.

The pertinent parts of the Court's charge follow:

> "If that money was extorted and was paid as a result of threat, then it was taxable income and Rutkin was under the duty of reporting that tax." (R930)

> "There is no contention here that the defendant didn't know he got the $250,000; the whole point is whether he got it by extortion or whether he got it properly. If he got it properly the tax was already paid." (R932)

These excerpts contain the only reference in the Court's charge to guide the jury concerning the keystone upon which was balanced the guilt or innocence of petitioner. First: the Court states that if the money was extorted and paid as a result of threats, the petitioner is guilty. Second: the Court states the whole point is whether petitioner got it by extortion or whether he got it properly. The entire instruction leads the Jury to only one result if they find that threats were made. They simply follow the line of reasoning as instructed: (1) threats mean extortion, (2) extortion results in taxable income not reported, (3) petitioner must be found guilty.

The instructions provided by the Court did not permit the Jury to find that petitioner received the money "properly" if they at the same time found that threats were employed. The manner and sequence in which the Court said "extortion or—properly" would definitely have permitted the Jury to believe that "properly" was the alternative to "extortion", and that the petitioner could not have gotten the money properly if he secured the same as a result of threats, regardless of whether or not the money was his tax free derivative share of the proceeds of the sale of Browne-Vintners. The error in such charge is that monies upon which taxes have already been paid are not changed in character to taxable income because the recipient thereof may have employed threats to enforce the collection thereof. The use of threats may properly be characterized as improper under some other criminal statute, but not under this indictment. This error was further aggravated when the Court refused peti-

tioner's request to charge #29, which went to the heart of this very question. Failure to charge request #29, which would have clarified the issue, resulted in substantial prejudicial error.

By an exception to the first quoted portion of the charge, petitioner's trial counsel questioned the accuracy of the Court's charge that extorted money was taxable income (R936). The Court of Appeals did not specifically pass upon the question of the correctness of the trial Court's charge in this respect. We submit that the determination of the correctness of the Court's charge on this point was absolutely necessary to a proper disposition of the cause in the Court of Appeals. The Court of Appeals in bypassing this question, made a new finding of fact to the effect that there is evidence in the record from which the Jury could have concluded that the money was not extorted, and that therefore, the conviction could be sustained.[1] Such a determination by the Court of Appeals was erroneous because the trial Court's instruction to the Jury that extorted money is taxable, was a specific instruction on a vital issue. *Bollenback* v. *U. S., supra.*

Apart from the appropriateness of the action by the Court of Appeals in sustaining a conviction on the basis of new findings of fact, the conviction should have been reversed by the Court of Appeals because the trial Court failed completely to charge the jury as to the legal eventualities present if they should find, as the Court of Appeals did, that the petitioner had received the money with a "sembance of a bona fide legal or equitable claim." Thus, the theory upon which this conviction was affirmed by the Court of Appeals was never presented to the jury. The semblance of a claim of right theory did not appear in this matter until the Court of Appeals rendered its opinion.

1 "So he did receive the money with a 'semblance' of a bona fide claim of right."

Of equal importance with the failure of the trial Court to instruct the jury as to the taxability of the money if the petitioner had received the same with a "semblance of a bona fide legal or equitable claim", was the trial Court's failure to instruct the jury as to the effect of the receipt of the money in the particular circumstances of this case insofar as the element of willfulness requisite for conviction was concerned. Any semblance of a bona fide claim of right which the petitioner could have had to this money could arise only from his having had, in his own mind at least, a right to a derivative share of the proceeds of the sale of the Browne-Vintners Co., Inc. Since the undisputed testimony is that the said monies were tax paid, and that this information was communicated to the petitioner by the attorney for Browne-Vintners, the importance of the failure to charge the jury with respect to the taxability of monies secured with the semblance of a bona fide claim of right, under these conditions and to charge the jury as to the effect of those conditions upon the requisite element of willfulness, was prejudicial error.

The conviction of the petitioner in the trial Court upon the theory that he obtained the money by extortion is error under the doctrine of *Commissioner* v. *Wilcox* and *U. S.* v. *Lewis*. Assuming arguendo that the concept of taxability contained in the findings of the Court of Appeals that petitioner had received the monies with a "semblance of a bona fide claim of right" correctly expresses the law on taxability under the circumstances of this case, then the conviction must be reversed and a new trial granted in order that in such trial the issues may be tried under appropriate instructions to the jury.

In connection with the Court's Charge, in addition to the fact that the jury were not properly instructed, it is respectfully submitted that the final portion of the charge

was highly prejudicial to the petitioner in that it contained a vast amount of irrelevant and immaterial matter which was of a highly inflammatory nature.

We refer to pages R933 to R934 of the record wherein the trial Court charged as follows:

> "But as you do that you must remember the other party to the controversy, the United States of America. Now, the United States of America is not just some far off idea or some distant concept. The United States of America is you and I and about one hundred and forty-five or one hundred and fifty million of our fellow-citizens who are banded together under law, trying to live in peace and comity with ourselves and with the rest of the world; trying desperately to make this America what so many men have suffered and died to make it; the land where justice exists; the land where honesty and decency is represented; where we have selected the government; where we won't be governed by any subgovernment, by any deleterious influences, but where we will be governed under our principles of freedom by the men and women that we select to govern us and that we hope will live up to the sacredness of their oath of service, although you have had a sample here where that is not quite true. But under God that is what we are aiming at. We are aiming at freedom and truth and justice.
>
> And so the people of the United States have their rights too and those rights must be guarded just as jealously for James Rutkin. The Government of the United States doesn't ask you to sacrifice anybody to prove its might. It asks you to do justice. That's all that Rutkin has a right to ask you to do, and that's what the Government of the United States asks you to do. It asks you to remember its rights too, remembering that unpunished crime, undetected crime, are threats to the majesty and dignity of our government. We all of us must do that which is our duty and do it without fear or favor. And so,

> keeping the balance between the two parties to this suit, the United States of America and James Rutkin, do justice between them. And I know of no better way in which to recall to you that which you must do than to recall the words of your oath, 'a true verdict to render according to the evidence, so help you God.' And if you do that, no one may quarrel with your verdict."

It is submitted that the petitioner was on trial for income tax evasion and for no other crime. The entire quoted portion of the Judge's charge tended to infer to the jury that here was the Government's opportunity to mete out punishment by means of this case for other matters not connected with the crime of income tax evasion. The trial Court specifically referred to the fact that "undetected crime" constituted a threat to the majesty and dignity of the Government and that "we won't be governed by any supergovernment" or by any deleterious influences.

Inasmuch as the Government indicted the petitioner for income tax evasion, it cannot be said that the Court was referring to the charges of the indictment under which petitioner was tried, since, if the basis for these charges were undetected, there would have been no trial at all. The Court must have been referring either to the alleged extortion which was not a federal offense, or implying an innuendo that this petitioner was a part of some supergovernment which controlled the Government of the United States. Certainly these facts could have no bearing on the guilt or innocence of the petitioner to the specific charges alleged in the indictment and could only serve to prejudice him in the eyes of the jury.

The remarks of the Court were virtually an instruction to the jury to convict this petitioner, if not for income tax evasion, then for other offenses which the Government suspected but could not detect and punish.

In reviewing the conviction, the question is not whether guilt may be spelled out of the record on the basis of new findings of fact by the Court of Appeals, but whether guilt has been found by the jury, according to the standards appropriate for criminal trials in federal courts and whether the finding of guilt by the jury is based upon instructions which clearly set forth the state of the law on the vital issues concerned. *Bollenback* v. *U. S., supra.*

In the instant case it is impossible to disregard the misdirection of the trial Court by assuming that the jury paid no attention to it, because the jury was also instructed that it must convict if it found that the $250,000.00, was extorted. In charging as he did on this point and in refusing defendant's requested charge No. 29, the trial Court failed in his responsibilities to give the jury a lucid statement of relevant legal criteria. Only upon such a statement can a jury adequately discharge its responsibilities for drawing appropriate conclusions from the testimony. The Court of Appeals sustained the conviction upon its own finding that the defendant received the $250,000.00 with a claim of right, as opposed to the jury's finding it had been extorted. We now have conflicting theories in the trial Court and in the Court of Appeals regarding a charge designed to guide the jury in determining guilt. Yet the conviction was affirmed upon the presumption that the jury was properly guided. Under these circumstances, the assumption must fall.

POINT 6

Did the trial Court properly charge the "false in one, false in all," maxim?

As we have already shown, Reinfeld, Rutkin and Zwillman were in business together during the prohibition era. Reinfeld and Rutkin both so testified and there was no dispute concerning this fact. The Government was permitted to elicit from Rutkin that on another occasion, he had said under oath, that he had not been in business with Zwillman. It was shown that in March, 1945, Rutkin was called to the office of one Bromberger, the then Commissioner of Investigation of the City of New York (R828, R829, R896). Mr. Bromberger was not sitting as a judge but was investigating a retail liquor license (R829). Rutkin was sworn and when asked, during the course of his interrogation, whether he had ever been in business with Zwillman, denied that he had been (R830). At the trial below, he explained that denial by saying that he had told Mr. Bromberger, a "white lie" because he was protecting the liquor license of a friend who was being persecuted by the License Division (R831). Rutkin said that if he realized he was under oath, he never would have denied the association (R831). When the District Attorney asked that the last remark be struck, the Court said that it would permit it to remain "but the Jury will know just exactly what value to place upon it, and what construction to place upon it" (R831). Previously, when an objection was made to another question put to Rutkin, the Court remarked, "If he lies, he is perjuring himself, if he doesn't lie, he is telling the truth. The Jury will judge" (R828).

The Government did not dispute Rutkin's statement given at the trial below that he and Zwillman had once

been partners. It had already established that fact, which of itself was not of any importance. The prior statement was offered solely to discredit Rutkin by showing that at one time he had made an inconsistent statement. At best, the prior statement was barely admissible.

Yet his answer given to Mr. Bromberger became the focal point and the basis of a charge which authorized the jury to reject all the rest of the defendant's testimony. The Court charged the jury as follows (R926):

> "There has been some testimony here about evidence given by witnesses in other courts or in other trials or proceedings antecedent to trial, such testimony having been sworn. I believe that one of the witnesses said 'yes, he told a white lie.' But I know of no dictionary or no classification which would make perjury a white lie; and I don't care whether that perjury was committed to help a friend or not, because if you help a friend by perjury, what do you do to yourself? Who knows? But if you believe that any witness at this trial lied in any respect, then you are free to reject all of the testimony of that witness or any part of it. It doesn't mean, if you believe he lied in one instance, that you must necessarily believe that he lied in all instances, because you must apply to every bit of the testimony your test of truth. So the fact that a witness lied in one respect doesn't, as I say, necessarily mean that he lied all the way through, but it is something for you to consider in determining what credibility you will give to the rest of that person's testimony; and that goes for every witness that appeared before you."

The charge so given was prejudicially erroneous in several respects, each one of which constitutes an adequate reason for reversal and is now separately discussed.

I.

The Court erroneously charged the *falsus in uno, falsus in omnibus* maxim. That maxim, which at one time required the rejection of a witness' testimony arose "when conviction of felony disqualified a witness; and it was based on the reasoning that, since perjury was a felony, the jurors should disregard the testimony of one whom they found to have perjured himself in the trial before them." *Virginian Ry. Co.* v. *Armentrout*, 166 Fed. (2nd) 400 (4th Cir.), 4 A. L. R. (2) 1064.

See also: 3 Wigmore on Evidence (3rd Ed.) Sec. 1009.

The notion that the testimony of one who gives false testimony must of necessity be rejected was finally discarded. The reasons for the change and the form in which the charge may now be given are stated by Prof. Wigmore (Sec. 1010) as follows:

> "There are on principle two reasons which exhibit its unsoundness as a rule of law. (1) It is untrue to human nature. It is not correct that a person who tells a single lie is therefore necessarily lying throughout his testimony, nor that there is any strong probability that he is so lying. The probability is to the contrary. (2) The jury are the part of the tribunal charged with forming a conclusion as to the truth of the testimony offered. They are absolutely free to believe or not to believe a given witness. Once the witness is determined by the judge to be qualified to speak, the belief of the jury in his utterances rests solely with themselves. Hence the judge cannot legally require them to believe or disbelieve any portion of testimony.
>
> Therefore there can not be, for the jury, a 'must' in this matter, but only a 'may'. The correct principle, therefore, can go no farther than to say that the jury *may* disregard the testimony, not that they *must* disregard it; and this is the form of the rule as laid down in the great majority of jurisdictions."

In Jones Commentaries on Evidence (2nd Ed.) it is stated in Section 2473 that:

> "Hence, according to the better reasoning and the weight of authority, the maxim, falsus in uno, falsus in omnibus, is a rule of permission and not mandatory. It is within the discretion of the jury wholly to reject the testimony of a witness whom they believe to have testified falsely in some particulars, or to accept some of his statements and to reject others. The true rule is that the credibility of a witness, who knowingly testifies falsely as to one or more material facts, is wholly a matter for the jury. They may believe or disbelieve his testimony as to other facts according as they deem it worthy or unworthy of belief."

Although the maxim was at one time widely recognized, it has been severely criticized even in its present form and has found disfavor with the courts in recent years. It has been characterized as pernicious and an encumbrance on the administration of justice. See 4 A. L. R. (2nd) 1078 for a summary of the cases involving and criticizing the maxim.

The maxim may not be charged except in a proper case and when stated to the jury is subject to specific limitations.

> "First, the testimony, concerning which the witness has sworn falsely, must relate to a material point in issue. Second, such testimony must have been given by the witness intentionally, and he must have known it to be false. Third, since credibility is a question for the jury, it is error for the judge in his instruction to the jury to single out a particular witness and to direct such cautionary instructions against his testimony, as such a course would tend to convey to the jury the impression that that particular witness is disbelieved by the judge." Jones Commentaries on Evidence, Sec. 2472.

All of the authorities agree that the rule does not apply unless the testimony relates to a material point in issue, is knowingly and intentionally false and is given in the case then being tried.

3 Wigmore on Evidence, Secs. 1014, 1015;
Coleman v. *Public Service Co-ordinated Transport*, 120 N. J. L. 384, 387, 199 Atl. 772, 773;
Larsen v. *Webb*, 332 Mo. 370, 58 S. W. (2nd) 967, 90 A. L. R. 67;
14 R. C. L. p. 736.

There are compelling reasons why all of such elements must concur before the maxim may be charged. The maxim is based on the proposition that when indictable perjury is committed at the trial then in progress, the penalty which may then be visited on the witness and on the party who called him is a permissible rejection of all of the testimony of the witness. Such a drastic measure is not legally permissible under any other circumstances. Even in the case of a prior conviction, the jury are instructed that the fact of conviction may be considered only as affecting the credibility of the witness. *United States* v. *Klass*, 166 F. (2) 373 (3d Cir.). In the latter instance, the jury may not be told that the conviction authorizes them to reject the testimony of the witness. The prior conviction is only a factor to be considered in weighing the testimony of the witness.

Since the penalty for indictable perjury committed at the trial is so severe, all of the elements hereinabove stated must be present in the case before the charge may be given and if present, all of the elements must be charged. If one of the elements is missing or is omitted from the charge, the charge is prejudicially erroneous. Thus, it was held in *Larsen* v. *Webb*, *supra*, that an instruction that if

the jury believe any witness to have sworn falsely "to any fact or circumstance" then they may disregard all or any part of the testimony of such witness, was erroneous in not limiting the charge to testimony as to a *material* matter. In *Addis* v. *Rushmore*, 74 N. J. L. 649, 650, 65 A. 1036 (Ct. of E. & A.), it was said that the jury may apply the maxim only "when convinced that an attempt has been made by a witness to mislead them in some material respect."

The following quotation from *Coleman* v. *Public Service Co-ordinated Transport, supra,* states the rule and cites cases from many jurisdictions in support of our contention:

> "'The cases seem to be in harmony on the point that the application of the rule "*falsus in uno, falsus in omnibus*" can only be properly invoked when the false testimony or statement is wilfully or knowingly or intentionally given or made concerning a material fact in the case; and that an instruction to a jury that if a witness has made a false statement or testified falsely, without qualifying it by wilfully, knowingly, or intentionally relating to a material fact in the case, the jury may reject all or any portion of the testimony given by such witness, is erroneous. *Ducharme* v. *Holyoke Street Railway Co.*, 203 Mass. 384; 89 N. E. Rep. 561; *Chicago and S. L. Railroad Co.* v. *Kline*, 77 Id. 229; *Pauton* v. *People*, 114 Ill. 505; 2 N. E. Rep. 41; *Moett* v. *People*, 85 N. Y. 373; *Childs* v. *State*, 76 Ala. 93; *Prater* v. *State*, 107 Id. 26; *Smith* v. *State*, 75 So. Rep. 627.' *State* v. *Samuels*, 92 N. J. L. 131, 133. See, also, *State* v. *Guida*, 118 Id. 289."

The Court below did not charge any of the essential elements. The jury were instructed that they were free to reject "all of the testimony" of a witness (and as we show below, Rutkin was the witness singled out) simply if they believed "any witness at this trial lied in any respect."

The jury were not told that the maxim could be invoked only if the testimony was knowingly and intentionally false, that such false testimony related to a material fact in issue and was given from the witness stand at the trial. Instead, the Court in substance and effect authorized them to reject all of the testimony of a witness if they believed he had on some occasion spoken falsely on any matter. The authorities above cited clearly condemn as erroneous the charge given by the Court below.

The erroneous charge was particularly damaging in this case. The maxim was charged as an integral part of the charge concerning Rutkin's testimony given before Mr. Bromberger, which Rutkin had stated was a "white lie". Read in context, it is evident that the Court was referring to that testimony when the maxim was charged, or at least a jury would be likely to so understand it. That testimony, characterized by the Court as perjury, was used as a point of reference for the maxim and thus the charge, in the words of the United States Supreme Court, had an "identifying token." *Cf. Shepard* v. *United States*, 290 U. S. 96, 103, 78 L. ed. 196, 201. Hence, when the Court in the next few sentences, told the jury they were at liberty to reject all of the testimony of a witness who had told a lie, the jury could readily consider that they could reject Rutkin's testimony because of the lie he had told Mr. Bromberger. It was improper and erroneous to lead the jury to believe that it could reject all the rest of Rutkin's testimony because of his statement to Mr. Bromberger. By stating, "But if you believe that any witness at this trial lied in any respect," the Court was referring not to testimony given at the trial in the Court below, but to the witness who appeared in that trial regardless of the proceedings in which such testimony was given. Such is the language of the Court and so would the jury be likely to understand it. The effect of the charge was to destroy

Rutkin's entire testimony on erroneous grounds erroneously stated.

Even if the Court had intended a reference to testimony given at the trial, the charge was insufficient in many respects as we have shown and the probabilities of confusion to the jury from the language and context are so likely that the charge must be deemed to be prejudicially erroneous.

Cf. Bihn v. *United States*, 328 U. S. 633, 90 L. ed. 1484;
Shepard v. *United States, supra.*

In *Miller* v. *United States*, 120 Fed. (2nd) 968 (10th Cir.), where the conviction was reversed for error in the charge, the Court said (at p. 972):

> "It is not sufficient that an instruction be so drawn that a jury may reach the right conclusion, but it is required that it be so framed that a jury may not draw the wrong conclusion therefrom."

Even where an instruction is technically correct, if it is so equivocal as to be probably misleading in actual fact, reversal should be ordered. *United States* v. *Bayer*, 156 Fed. (2nd), 964, 967 (2nd Cir.).

The charge complained of was clearly erroneous and prejudicial for the several reasons argued above. Reversal must be ordered so long as "the jury might have been influenced by the erroneous charge." *Bihn* v. *United States, supra.* See also *Kotteakos* v. *United States*, 328 U. S. 750, 90 L. ed. 1557; *Schaerman* v. *United States, supra.*

Exception was taken to the charge. The Court thereupon charged the jury as follows:

> "Counsel has said to me that I told you that if you believe the witness lied in any respect you might disregard all of his testimony. What I had in mind is that if you find that he lied you may accept or reject such testimony as you believe to be false or

true, accept the true and reject the false and if you had any other impression, please correct it to that extent." (R935)

The additional charge not only failed to cure the error but in fact emphasized the erroneous charge which had previously been given. That charge was not withdrawn. The new charge was a substantial reiteration of the maxim, again in erroneous form. The original charge authorized the jury to reject all of Rutkin's testimony. The new charge merely told the jury that they may accept testimony which they believe to be true, giving them in converse form the same choice previously given, namely, to reject or accept such testimony in their discretion.

II.

Even if the instruction had been properly stated, it was error to single out Rutkin when the false in one charge was given. That charge came immediately following the characterization of Rutkin's statement to Mr. Bromberger. It was likely that the jury would understand it was meant to apply to Rutkin even though his name was not specifically mentioned, for no other witness had said that he had told a "white lie". The Court's charge was therefore doubly erroneous. See Jones Commentaries on Evidence, Sec. 2472, page 42, *supra*.

Such singling out by the Court in *Virginian Ry. Co.* v. *Armentrout, supra*, resulted in a reversal of the judgment. That was an action for personal injuries resulting in a verdict for the plaintiff. The only questions of fact in the case arose in connection with the engineer's discharge of his duty as to keeping a proper lookout and using due care in stopping the engine and with respect to all of these matters he was the defendant's principal witness and the only witness who saw the accident. The Court charged the jury as follows:

"You see, as I told you a while ago, if you think that a witness testifies falsely about something you don't need to believe him on anything, so if you believe that Murdock said he sanded the rail, knowing that he did not sand the rail, then that would be a false statement and you would not have to believe anything he said."

In reversing a judgment for the plaintiff, the Appellate Court said:

"It was proper, of course, for the judge to array the evidence and comment upon it; but what the law envisions in this regard is judicial comment fairly explaining to the jury the contentions of the parties with respect to the evidence, not argument by the court in support of contentions. The judge occupies a postion of great influence with the jury in conducting a trial; and while he should not hesitate to exercise the power of comment to clear away false issues and lead the jury into a proper understanding of the facts, he should be careful not to assume the role of counsel or to say anything which might have the effect of prejudicing the cause of either party before those whose duty it is to decide on the facts. * * *

"It was especially damaging to defendant's cause for the trial judge here to charge the falsus in uno falsus in omnibus rule in connection with the conflict of testimony relating to sanding the rails and the position of the engineer in the cab. * * *

"There was no occasion to apply to such testimony the harsh falsus in uno falsus in omnibus rule, which has little or no place in modern jurisprudence. * * *

"We think that the reference to the rule in connection with the testimony of the engineer was most unfortunate in that it tended to discredit the witness upon whom the defendant's entire defense rested, and did so without any real justification that appears of record. Even if it were a proper rule to apply

in some cases, there was no reason to apply it here; and its prejudicial effect was manifestly not removed by the charge given after the taking of defendant's exception. This did no more than instruct the jury that they were to judge as to whether there had been any contradiction in the testimony of a witness and repeat that, upon the finding of a contradiction, they might consider this in determining whether they would believe the witness' testimony.

"It is a reasonable assumption that this prejudicial charge to which exception was taken influenced the jury adversely to defendant and was a contributing factor in causing the jury to return a verdict in an excessive amount."

The charge quoted at page 45, *supra,* was clearly erroneous for the several reasons argued above. Since it was neither withdrawn nor cured by the subsequent remarks of the Court and was extremely prejudicial, it should result in a reversal of the conviction.

POINT 7

Did the trial Court's charge erroneously impair the petitioner's testimony?

The effect of the charge which we have hereinabove discussed was to strip the defendant of his competency to testify and for this additional reason constituted prejudicial error.

A defendant in a criminal case has a right to testify and there is no presumption in favor of or against his truthfulness. *Allison* v. *U. S.*, 160 U. S. 203, 40 L. ed. 395. As the Court said in that case, it is

"* * * for the jury to test the credibility of the defendant as a witness, giving his testimony such weight under all the circumstances as they (think) it entitled to, as in the instance of other witnesses,

uninfluenced by instructions which might operate to strip him of the competency accorded by the law.

> "We repeat what was said by Mr. Justice SHIRAS, speaking for the Court, in *Hicks* v. *United States*, 150 U. S. 442, 452 (37: 1137, 1141); 'It is not unusual to warn juries that they should be careful in giving effect to the testimony of accomplices, and perhaps a judge cannot be considered as going out of his province in giving a similar caution as to the testimony of the accused person. Still it must be remembered that men may testify truthfully, although their lives hang in the balance, and that the law, in its wisdom, has provided that the accused shall have the right to testify in his own behalf. Such a privilege would be a vain one if the judge, to whose lightest word the jury, properly enough, give a great weight, should intimate that the dreadful condition in which the accused finds himself should deprive his testimony of probability. The wise and humane provision of the law is, that "the person charged shall, at his own request, but not otherwise, be a competent witness." The policy of this enactment should not be defeated by hostile comments of the trial judge, whose duty it is to give reasonable effect and force to the law.' "

The charge quoted at page 45, *supra*, violated the principles announced in the *Allison* case and was especially damaging to the defendant as we will now show.

There was a conflict between the version of the prosecution and that of the defense as to the reason why the money was paid and the character of the payment. The prosecution contended that the money was paid solely because of threats made to Reinfeld. The defense, contending that the money constituted payment of the defendant's interest as a stockholder in Browne-Vintners Company, produced a number of witnesses in support of that contention. The question of credibility was for the jury's determination, uninfluenced by the Court.

> "It is well established as a basic proposition that in a jury trial questions as to the credibility of witnesses are peculiarly within the province of the jury, and that in general no instruction should be given which is designed to influence the jury as to the credit to be given a particular witness." 90 A. L. R. 74.

The Court called the conflicting testimony specifically to the jury's attention, saying, "that somebody lied and committed perjury is perfectly patent because contradictory stories have been told, and you must see where the truth lies" (R925). Such a charge is not usually given because in almost every case contradictory stories are told. However, having made such a statement, the Court should then have left the matter of credibility strictly to the jury, uninfluenced by any remark which would indicate to the jury which of the witnesses or which side was unworthy of belief. 53 Am. Jur., Sec. 599, p. 474. Instead, it plainly indicated that it was Rutkin, and not Reinfeld, who should be disbelieved.

Only a few moments before the charge complained of was given, the Court told the jury to consider the interest that any of the witnesses might have in the outcome of the trial (R925). It then said:

> "Certainly the defendant Rutkin has a very strong interest in the outcome of this trial. Whether anyone else has or not is for you to determine; and whether that interest in the outcome of this trial would lead the defendant or any other witness to color his testimony or to lie is for you to say * * *" (R925)

Specific attention was next called to Rutkin's statement that he had told a "white lie" when he appeared before Mr. Bromberger. The Court then put its weight behind a devastating comment which drove home to the jury the effect which the Court believed that he could and should

have upon the jury in weighing Rutkin's testimony. Characterizing Rutkin's previous statement as perjury, the Court then said:

> "* * * and I don't care whether that perjury was committed to help a friend or not, because if you help a friend by perjury, what do you do to yourself? Who knows?"

Then came the charge authorizing the jury to reject testimony which they probably and would reasonably understand to be Rutkin. It must be remembered that when Rutkin had said that his statement to Mr. Bromberger was a "white lie," the following occurred in the presence of the jury:

> "The Court: Wait a minute—a white lie?
>
> The Witness: Well, I wasn't under any pressure—
>
> The Court: But you were under the pressure of swearing in the presence of the ever living God to tell the truth."

The portion of the charge quoted above was argumentative and extremely damaging. It was not the statement of a proposition of law which primarily is the function of the Court at that stage of the case. The statement and questions argued and implied that since Rutkin had lied to help a friend, he would readily commit perjury to help himself when he was on trial. Such argument by a trial Court is wholly improper,

> "The influence of the trial judge on the jury 'is necessarily and properly of great weight' and 'his lightest word or intimation is received with deference, and may prove controlling.'" *Quercia* v. *United States*, 289 U. S. 466, 77 L. Ed. 1321.

In *Weare* v. *United States*, 1 Fed. (2nd) 617 (8th Cir.), where the conviction was reversed on the ground that the charge was argumentative, the Court said:

> "Under the Constitution one accused of crime is entitled to a determination by a jury of the fact questions involved. The jury can easily be misled by the court. Its members are sensitive to the opinion of the court, and it is not a fair jury trial when the court turns from legitimate instructions as to the law to argue the facts in favor of the prosecution. The government provides an officer to argue the case to the jury. That is not a part of the court's duty."

In *Malaga* v. *United States*, 57 Fed. (2nd) 822 (1st Cir.), the Court said:

> "Argumentative discussion on the effect of evidence as proof, or the inference to be drawn from the acts of witnesses, or of the respondent in a criminal case, are universally recognized as out of place from the bench."

In *Bihn* v. *United States, supra,* the sole question presented was whether a portion of the charge was reversible error. Essentially the question involved was whether the defendant stole ration coupons from bank files which were accessible to others. In charging the jury the Court posed questions to them: In condemning the charge as erroneous and argumentative, the Court said:

> "* * * The instruction sounds more like comment of a zealous prosecutor rather than an instruction by a judge who has special responsibilities for assuring fair trials of those accused of crime."

The credibility of the defendant was to be determined by the jury without influence by the Court. Nevertheless, the weight of the Court was thrown into the balance so effectively that the jury could do nothing else but disregard the defendant's testimony in view of the Court's argument. The result was to deprive the defendant of his own testimony. The effect produced by the Court's com-

ments and charge was not overcome by the general charge that questions of fact were for the jury's determination. *Quercia* v. *United States, supra.* The following from the *Quercia* opinion can well be applied to the charge below:

> "His (the court's) characterization of the manner and testimony of the accused was of a sort most likely to remain firmly lodged in the memory of the jury and to excite a prejudice which would preclude a fair and dispassionate consideration of the evidence."

See also:

Hickory v. *United States,* 160 U. S. 408, 40 L. ed. 474.

The statement by the Court which attacked the veracity of the defendant by its argumentative questions was damaging as appears from the record. The inflection or tone of voice could readily make it more damaging. *Cf. Bihn* v. *United States, supra.* Combined as it was with a charge which erroneously permitted the jury to disregard the credible evidence of the defendant, the challenged instruction was so prejudicial that the conviction should be reversed.

POINT 8

Did the trial Court err in impugning the testimony of important witnesses for the defense?

Under questioning by the Court, Reinfeld testified that Rutkin had no claim upon him for anything after 1933 and that the payment was made solely because of the threats. He said that Rutkin had absolutely no financial interest in Browne-Vintners (R48, R49) and that Rutkin's consent to the sale of the company had not been asked (R133). On the other hand, Rutkin maintained that the pay-

ment was in settlement of his interest in that company. In support thereof, Joseph and Harry Davis testified that Rutkin was present at the hotel meeting in 1940 and that his consent to the sale was requested by Reinfeld and obtained (R439, R440, R500). Joseph Davis testified that in fact it was Rutkin who asked him to attend the meeting (R439). Their vital testimony, if not impugned by the Court would have been of great value to the defense. It strongly demonstrated Rutkin's financial interest in the company as late as 1940. It refuted Reinfeld's testimony that Rutkin had no such interest and had not been consulted about the sale. If these witnesses were believed by the jury, Reinfeld's credibility would thereby have been seriously impaired and his testimony on a crucial issue would have been seriously damaged.

The credibility of the witnesses should have been left for the jury's determination uninfluenced by the Court. Instead, the Court assailed the defense witnesses and threw its weight into the balance against the defense in the following manner: An improper question was asked of Harry Davis and answered, to which an objection was made (R503). In reply to that objection, the Court said: "Well, I frankly am not impressed by this witness or his brother, and I will not strike it from the record; * * *" (R503). When an exception was taken to the Court's characterization of the witness, the Court said: "I am stating my opinion of this witness * * * from his remarks on the stand" (R504).

The foregoing remarks by the Court were prejudicial to the defense. Similar remarks were considered reversible error in *Cal-Bay Corporation* v. *United States,* 169 Fed. (2nd) 15, 22 (9th Cir.). That case was a condemnation proceeding. A witness had testified to the amount paid by an oil company for an interest in land. The Court said to that witness: "I just can't believe you are telling the truth

on that." The Court said that there could be no doubt of the likely effect that that statement had on the jury, citing *Quercia* v. *United States, supra.*

In the instant case, the Court's quoted remarks could readily have proved controlling on the jury's determination of the credibility of the Davis brothers and on the vital issue of Rutkin's interest in the company. The remarks were so harmful that they should result in a reversal.

POINT 9

Was the charge of the trial Court argumentative and one-sided?

Other portions of the charge which have not been previously adverted to were prejudicial to the defendant and will now be separately considered.

I.

The Court's charge was not given in the judicial language that ordinarily characterizes a charge. It spoke of "this stinking recital", "the skullduggery", the "incredible recital of chicanery". It characterized Rutkin as a scoundrel, saying, "You are not deciding which is the bigger scoundrel, Reinfeld or Rutkin * * * but you are not passing upon respective degrees of scoundrelism between any two people" (R927 to R929).

The Court's indignation was aroused apparently by the conduct of the defendant and others during and after the prohibition era. This may account for the manner and terms in which it charged the jury but does not excuse the error thus committed. *Cf. Starr* v. *United States*, 152 U.S. 614, 626, 38 L. ed. 841, 846, where the Court said:

"* * * The circumstances of this case apparently aroused the indignation of the learned judge in an uncommon degree, and that indignation was expressed in terms which were not consistent with due regard to the right and duty of the jury to exercise an independent judgment in the premises, or with the circumspection and caution which should characterize judicial utterances."

II.

The Court's charge was one-sided and for this reason was erroneous. The courts have uniformly held that it is an elementary principle that a charge may not be one-sided and that a court may not make statements in favor of or against one side only. When the court states the evidence, it must state it fairly and accurately, setting forth that which is favorable on a point as well as that which is unfavorable. *McGlothan* v. *Pennsylvania R. Co.*, 170 Fed. (2nd) 121 (3rd Cir.); *O'Shaughnessy* v. *United States*, 17 Fed. (2nd) 225 (5th Cir.); *Hurwitz* v. *United States*, 229 Fed. 449 (8th Cir.); *Wallace* v. *United States*, 291 Fed. 972 (6th Cir.), in all of which cases the judgments below were reversed.

The Court did not adhere to the foregoing principles as shown by the following:

1. Reinfeld had testified that when the partnership funds were invested in the Browne-Vintners Company, Rutkin had no interest, since at that time he was overdrawn $35,000. Rutkin had denied this and had received support from Facher's and Kanengiser's testimony. A critical issue was thus raised. The Court summarized Reinfeld's testimony on this important issue but did not state the testimony favorable to Rutkin, omitting all reference to such testimony (R929).

2. After saying that Rutkin had no stock interest in the company, Reinfeld testified that the payment made in 1943 was not for any such interest but because of threats. The Court summarized that testimony and said that it was corroborated by one of the persons present. The so-called corroborative testimony showed that Rutkin's threats, if made, were related to a claim that he had against Reinfeld (R231, R244). When it spoke of the corroboration, the Court should have called to the jury's attention the testimony which indicated that claim. *Cf. Meadows* v. *United States*, 82 Fed. (2nd) 881, 885. The Court also should have made reference to Mr. Kessler's testimony which contradicted the testimony of Reinfeld and showed that Reinfeld had told Mr. Kessler that Rutkin's claim was the same as Zwillman's.

3. There was no secret about the payment of the $250,000. Many people were present and a general release was executed. This important testimony was disparaged by the charge that none of those present "would be inclined to go out and publish it," a statement to which exception was made (R931, R936).

III.

Other remarks of the Court which have no place in a judge's charge and which we contend created prejudice against the defendant presented issues which had nothing to do with the guilt or innocence of the defendant.

> "The chief object contemplated in the charge of the judge is to explain the law of the case, to point out the essentials to be proved on the one side and the other, and to bring into view relations of the particular evidence adduced to the particular issues involved." *Bird* v. *United States*, 180 U. S. 356, 45 L. ed. 570.

The Court did not adhere to the principles of the *Bird* case, *supra*. The case was tried at a time when the Korean conflict was raging. Presumably, the jury was composed of salaried individuals whose income taxes may be burdensome. Their only function was to determine the guilt or innocence of the defendant on the facts, uninfluenced by the result of the case on the administration of justice and the fiscal affairs of the Government. Those issues were nevertheless presented to them by the Court, which told them that, "The ordinary salaried individual is expected to pay a tax * * * to carry on every activity of our Government. It is to carry on the expenses of the administration of justice. It is to carry on the expenses of war; * * * and the little fellow who gets a salary has his money taken out of it weekly" (R931). They were told that income tax evasion was chiseling "because what one person who owes a just tax doesn't pay, the next man has to pay and that is not a trifling thing" (R931, R932). It told the jury that the United States, composed of 150,000,000 citizens, "asks you to remember its rights too, remembering that unpunished crime, undetected crime, are threats to the majesty and dignity of our government; and that unpunished crime undermines our government" (R933, R934).

In considering such a charge, the jury, although it might have a reasonable doubt of the defendant's guilt, could be influenced by it not to resolve that doubt in favor of the defendant, fearful that if they gave the defendant the benefit of that doubt they might be parties to an act undermining the government. The charge could also excite resentment, passions and prejudices. Such instructions have been held erroneous. In *Starr* v. *United States*, *supra*, where the Court charged that "if the law has been violated, it is to be vindicated; you are to stand by the nation; you are to say to all people that no man can trample

upon the law wickedly, violently, and ruthlessly; that it must be upheld if it has been violated," the Supreme Court said:

> "These expressions are qualified to some extent by other parts of the charge, which we cannot give at length, but we are constrained to express our disapprobation of this mode of instructing and advising a jury.
>
> "Whatever special necessity for enforcing the law in all its rigor there may be in a particular quarter of the country, the rules by which and the manner in which the administration of justice should be conducted are the same everywhere, and argumentative matter of this sort should not be thrown into the scales by the judicial officer who holds them." See also *Hickory* v. *United States, supra.*

The charge in the foregoing respects was improper, erroneous and prejudicial to the defendant.

CONCLUSION

We respectfully urge that the judgment below should be reversed for the reasons argued above.

Respectfully submitted,

JACK L. COHEN,
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EDWARD HALLE,
On the Brief.

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No. 195

In the Supreme Court of the United States

OCTOBER TERM, 1951

JAMES RUTKIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Court of Appeals (R. 991-1008) is reported at 189 F. 2d 431.

JURISDICTION

The judgment of the Court of Appeals was entered on May 23, 1951 (R. 1009). Petition for rehearing was denied on June 19, 1951 (R. 1017). The petition for a writ of certiorari was filed on July 18, 1951. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTIONS PRESENTED

1. Whether, in the circumstances of this case, moneys which petitioner claimed and was able to persuade another to pay him by means of harassing demands and repeated threats, constituted taxable income.

2. Whether it was prejudicial error for the trial court to refuse to charge, in the language proposed by petitioner, that even if petitioner obtained money through threats, he must be acquitted if the money was, in fact, in payment for petitioner's interest in a business.

STATUTE INVOLVED

Internal Revenue Code:

SEC. 145. PENALTIES

* * * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * * *

(26 U.S.C. 1946 ed., Sec. 145.)

STATEMENT

The petitioner was indicted for wilfully attempting to defeat and evade a large part of his income and victory tax for the calendar year 1943. The charge was that he did so by filing a false and fraudulent return wherein he stated his net income for that calendar year was the sum of $18,966.64 and that the amount of income and victory tax owing thereon was the sum of $6,843.93, whereas his corrected net income was the sum of $268,622.04, upon which he owed an income and victory tax of $222,408.32. (R. 5-6.) On the basis of the jury's verdict of guilty (R. 3), the petitioner was fined $10,000 and was sentenced to imprisonment for four years (R. 3). The judgment of conviction was affirmed by the Court of Appeals for the Third Circuit, with one judge dissenting (R. 1009).

The sum of $250,000 involved in this case and charged by the Government to be the income of the petitioner in 1943, upon which no tax was paid, was admittedly transmitted by Reinfeld, the chief Government witness, to the petitioner. The Government charged that the payment was made as a result of extortion. The petitioner contended that it was in final settlement of his asserted interest in the Browne-Vintners Company, a corporation organized after the repeal of prohibition. It was conceded that if petitioner's version were the correct one, he would be entitled to an acquittal because the capital gains tax had already been paid on moneys

transferred in payment for interests in the Browne-Vintners Company. (R. 24; 991-992.)

The following is an outline of the evidence favorable to the Government which the jury was entitled to believe:—

The history, organization, and liquidation of the Browne-Vintners Company.—The witness, Reinfeld, testified that in 1926, during the prohibition period, he and five other men were engaged in what he called a "High seas venture". This was a bootlegging operation which, as described, consisted in putting "a boat out there beyond the 12-mile limit and different people come and buy whiskey." The enterprise continued until 1932. In 1929, the petitioner came into the group. According to Reinfeld the petitioner did not contribute any money, but "just wanted to be a partner and we took him in." Reinfeld explained that the petitioner was taken in without any monetary contribution because otherwise "we were afraid that we will get some interference and trouble." (R. 12-18.)

Reinfeld testified that the petitioner was to receive three percent of the profits. A few months after the inception of the "High Seas venture," one of the members of the organization "said he was going to quit because he had some arguments with Rutkin and he is afraid." (R. 18.) The person did quit and gave his three percent share to the petitioner (R. 18-19).

The "High Seas venture" was liquidated early

in 1933. There was an accounting "as to what each partner had". Each member was informed of his interest. The petitioner's percentage interest at that time was six percent, despite the fact that he had not paid any money into the enterprise. The petitioner was not entitled to any distribution upon the liquidation of the "High Seas venture" because he was then overdrawn to the extent of $35,000, and this fact was brought to his attention. He was given a memorandum showing that he was overdrawn to the extent of $35,000. (R. 22-24, 196, 992.)

In October, 1933, the members of the original "High Seas venture", with the exception of the petitioner, organized the Browne Vintners Company (R. 24). The petitioner did not own any of the Browne Vintners stock in his own name or through nominees. He did not have any interest in any of the assets of the corporation. (R. 24-26, 120.)

Reinfeld testified that in 1936, the petitioner, asserting that he had a six percent interest in the old company and a continuing six percent interest in Browne Vinters, demanded $60,000. Reinfeld's reply was: "Jim, you haven't got any money". Nevertheless, Reinfeld gave the petitioner the $60,000 because he liked him and because the petitioner had convinced him that "he is going to be a success". At that time the petitioner signed a document which, among other things, stated that

he sold, assigned and transferred to Reinfeld all of his "right, title and interest in and to six percent of the issued and outstanding shares of capital stock, preferred and common, as of October 1, 1936, of Browne Vinters Co., Inc., a New York corporation, which represents any and all of such shares of capital stock in the said Brown Vintners Co. Inc., that I am entitled to." As to this document, Reinfeld testified that the petitioner delivered it to him saying that "he was paid out in full according to what claims he was making and I decided to recognize the claims and pay him out in full." (R. 32-33, 289, 290-291.)

At the time the aforementioned document was executed, Browne Vintners was worth approximately $700,000, six percent of which would be approximately $42,000. The amount of $60,000 which Reinfeld gave the petitioner was more than the six percent which the petitioner claimed as his interest in the corporation. (R. 289.)

In 1939, Reinfeld obtained a job for the petitioner with Browne Vintners at $15,000 a year. The petitioner remained in this job from six to eight months. During that period the petitioner became involved in a liquor violation in Boston and asked Reinfeld to lend him $2,500. Reinfeld paid a lawyer named Kessler $2,500 to help him or for helping him. The petitioner lost his job because of the Boston incident. (R. 36-37, 993.)

Reinfeld and the petitioner had no discussions

about Browne Vintners except that occasionally the petitioner asked Reinfeld how business was. The petitioner came to the Browne Vintners offices three or four times during some months and sometimes not for six months. (R. 108.) The petitioner testified that he did not have an office in Browne Vintners but that he used all of the offices indiscriminately (R. 807). He stated that he was not an officer of the corporation, did not attend any of the stockholders or directors meetings, gave no orders to any of the officers of the company, and they took no orders from him. He did not know whether his name appeared on the records of the company as a stockholder. (R. 808.)

Joseph Newman, who was connected with Browne Vintners from 1933 to December, 1940, and who was its president for two years, testified that he saw the petitioner at the plant only a couple of times; that the petitioner did not have an office; did not represent the company in any of its affairs and did not attend stockholders or directors meetings and did not establish any policies or programs (R. 898-900). Edward T. Browne, first president of the company, testified that he did not know the petitioner and that he never saw him at the Browne Vintners premises during the time that he was president; that the petitioner did not participate in the business affairs of the company (R. 903). John H. Owen, former president and vice-president of Browne Vintners, later an

official with McKesson & Robbins, stated that he saw the petitioner at the Browne Vintners offices four or five times; that the petitioner had nothing to do with the business affairs, never participated in policy formation, never did any work at the New York office, and never attended any of the meetings of the stockholders or directors (R. 908-909). Mortimer Lowell testified that he did advertising work for Browne Vintners from its inception to the time that it was sold to Seagrams; that he was at the office frequently and never less than once a week and sometimes three or four times a week; that he saw the petitioner there several times and heard his name mentioned, but that the petitioner never gave any orders with respect to advertising and did not participate in any way (R. 907).

In 1940, after extensive negotiations, Browne Vintners was sold to Seagrams for $7,500,000. Debts amounting to $8,000,000 were assumed by the purchaser. (R. 27.) Except for certain monies withheld for debts and contingencies (R. 128), there was a distribution of the proceeds of the sale. The petitioner did not have any interest in the company at that time. He was not an actual or beneficial owner of any stock. (R. 28.) The sale of the company was not discussed with him. (R. 131.) A list of real stockholders and nominees was compiled by the accountants. (R. 28.) The capital gains tax on all the stock was paid by the record owners. (R. 129.)

The threats.—In 1941, Reinfeld gave the petitioner $10,000 on the latter's representations that he wished to purchase a tavern. The petitioner returned in a week or ten days for more money, at which time Reinfeld accused him of losing the $10,000 at the racetrack. "And that was our first trouble", Reinfeld stated. There was an argument and Reinfeld told the petitioner that he was not going to give him another cent; that he was finished. (R. 38-39.)

Reinfeld testified that in late October or early November, 1942, the petitioner came to his office at Browne Vintners and started off by saying to him, "Where is my money? * * * You all done well, you all made a lot of money, what about me?" Reinfeld answered, "What do you want from me now that you threw all your money away? I haven't got your money." The petitioner insisted that Reinfeld give him $100,000 to pay his debts. There was an argument and Reinfeld said that the petitioner threatened him. Asked to tell about this in detail Reinfeld said, "Well, he had his hand in his pocket (indicating) and said that he would kill me if I did not give him the money in three days." Then, said Reinfeld, the petitioner "run out". Reinfeld stated that because of the incident he cancelled some appointment that he had and that he "was disgusted and discouraged with business and everything." (R. 40-42.)

A couple of weeks later the petitioner again came in to Reinfeld's office, pushed the latter's secretary

aside, and told Reinfeld "that if I don't give him that money that he is going to kill me." At that time the petitioner's demand went up to $150,000. Reinfeld was then asked, "What happened to you about this time, if anything?" He answered, "Well, I took sick." (R. 42-43.)

A week or two later the petitioner came to Reinfeld's New York hotel room and saw him there. Reinfeld said he did not remember what the petitioner said but that it was "nothing bad". As the petitioner was leaving, Reinfeld followed him to the door and then, Reinfeld states that Rutkin "opened the door and started to walk out. He turned around and put a gun on me" saying " 'you get well and get me that money' ". At that time his figure was $200,000. He said, "Get me $200,000 or I will kill you." Sometime later, no specific date being fixed, at a time when Reinfeld stated he was just getting well, the petitioner telephoned him, told him that he was sick and started to apologize. The petitioner sounded over the telephone as though he were crying. Reinfeld said that he felt bad about this and agreed to go to the petitioner's hotel to see him. He did go to the hotel. The petitioner told him that he had not slept since he had been up to see Reinfeld and that he must have been crazy or something. Reinfeld stated that he felt very sorry for the petitioner and said, "Let's forget the whole thing." The petitioner told him that he owed $4,000 for room rent and some other things and asked him for money. Reinfeld went

out, obtained $5,000 and brought it back to him. Then, stated Reinfeld, "he told me if I could only give him another $5,000, how much he will think of me and all that. So I gave him another $5,000 at about 5 or 6 o'clock that afternoon." (R. 43-44.)

Within a month, at the home of his brother-in-law, Reinfeld again saw the petitioner (R. 30). There the petitioner stated that he was going to kill Reinfeld and Reinfeld's family if he did not get his money (R. 51, 230-231).

Later the same day, when certain negotiations between Reinfeld and others had been completed, Kessler, an attorney who had arbitrated these other matters that day, asked Reinfeld, "How about Mr. Rutkin?" Reinfeld asked: "Well, what is his claim?" Kessler replied: "Well, you been friends, you slept with him for a long time; now go in in the other room and give him some money and get through with it". (R. 47, 223-224.) Reinfeld and the petitioner went into another room. The petitioner had first wanted half a million dollars and finally said he would take $250,000. Reinfeld agreed to pay this amount because "I wanted to get rid of him anyway and get this off my mind, because I carried it long enough. I was a sick man. So I agreed." (R. 47, 225-226; 994-995.)

Several weeks after the meetings just described but before the actual payment of the $250,000 here involved, the petitioner telephoned the office of the Jos. A. Reinfeld Company. Lou Holtz, Rein-

feld's brother-in-law, answered and recognized the petitioner's voice. The petitioner said something about the fact that Reinfeld was sick and that if anything happened to him he would hold Reinfeld's family responsible for the money which he claimed; that if he did not get it he would kill the whole family. (R. 231-232.)

$250,000 was actually paid over to the petitioner on May 11, 1943, in exchange for a general release from him in favor of Reinfeld, the latter's brothers, Browne Vintners Company, Inc., and others (R. 52-53, 269).

ARGUMENT

1. The petitioner's chief contention is that the $250,000 here involved did not constitute taxable income to him because, under the Government's theory of the case, the funds were extorted. However, the broad language of Section 22(a) of the Internal Revenue Code and the claim of right doctrine announced by this Court in *North American Oil* v. *Burnet*, 286 U. S. 417, and *United States* v. *Lewis* 340 U. S. 590, rehearing denied, 341 U. S. 923, are controlling, on the facts in this record, in favor of taxability. *Commissioner* v. *Wilcox*, 327 U. S. 404, is inapplicable.

The Government's evidence was that the $250,000 was illegally obtained by the petitioner. But illegality does not *per se* preclude taxability. The legislative history of Section 22(a) demonstrates that it was the intent of Congress to tax gains, profits, or income from any unlawful venture as

well as from any lawful business. Unlawful gains, except for the special category excluded by the *Wilcox* decision, have been taxed consistently. *E.g., Johnson* v. *United States*, 318 U. S. 189 (illegal gambling); *United States* v. *Sullivan*, 274 U. S. 259 (traffic in liquor); *Caldwell* v. *Commissioner*, 135 F. 2d 488 (C.A. 5th) (bribes); *Humphreys* v. *Commissioner*, 125 F. 2d 340 (C.A. 7th), certiorari denied, 317 U. S. 637 (ransom funds); *Barker* v. *Magruder*, 95 F. 2d 122 (C.A. D.C.) (usurious interest); *Chadick* v. *United States*, 77 F. 2d 961 (C.A. 5th), certiorari denied, 296 U. S. 609 (graft); *Chicago R. I. & P. Ry. Co.* v. *Commissioner*, 47 F. 2d 990 (C.A. 7th) (railroad overcharges); *Steinberg* v. *United States*, 14 F. 2d 564 (C.A. 2d) (illicit traffic in liquor); *Akers* v. *Scofield*, 167 F. 2d 718 (C.A. 5th), certiorari denied, 335 U. S. 823 (funds obtained under false pretenses); *Patterson* v. *Anderson*, 20 F. Supp. 799 (S.D.N.Y.) (unlawful insurance policies); *United States* v. *Wampler*, 5 F. Supp. 796 (D. Md.) (moneys of a client fraudulently misapplied by an attorney).

In the *Wilcox* case, this Court held only that "the bare receipt of property or money wholly belonging to another lacks the essential characteristics of a gain or profit within the meaning of § 22(a)." 327 U.S. at 408. The taxpayer in that case had obtained the money in question by embezzling it, not, as in this case, as a result of a bilateral agreement, however tainted with illegal-

ity, pursuant to which the payor intended to, and did, make payment. There was here no "bare receipt" of the $250,000 and, as the court below has emphasized (R. 997), the petitioner received the $250,000 with a "semblance of a *bona fide* claim of right", a conclusion fully substantiated by the testimony of both the petitioner and the Government witness Reinfeld. In addition, there was here no definite, unconditional obligation to repay or return the funds, as there was in *Wilcox*. As the court below put it (R. 997-998):

> * * * there is not the slightest hint in the record that Rutkin ever had or has such obligation. Reinfeld, after agreeing to giving the $250,000 to Rutkin, did cause that sum to be turned over to him and took from him a general release. Reinfeld, the owner of the funds, participated in what he designates as their misappropriation by his own conscious acts. Obviously, as a result of that transaction, Rutkin at that time possessed a colorable claim of title to the money. This has never since been challenged. Reinfeld has unmistakably considered the $250,000 to be Rutkin's property. He has left Rutkin in undisputed possession of it for the last eight years and has permitted the statute of limitations to expire on whatever right he might have had to reclaim the money.

To hold that this case thus differs from the *Wilcox* situation is not to turn one's back on the Government's theory of the case at trial or on

the jury verdict as guided by the instructions of the trial judge. (Pet. 9-10.) For between the petitioner's rejected contention, that he was in fact entitled to the $250,000 as his proper share of the business in which he had once had an interest, and a case of simple theft or robbery—securing of money from a stranger at gun point, for example—is a middle ground. That is what we have here: the assertion of a claim, baseless in fact, but pursued so insistently and threateningly as to result in a decision by the victim to negotiate a settlement. What the jury here decided was not that petitioner had no "claim" but rather that he had no "right".

2. The possible basic factual determinations in this case were carefully submitted to the jury by the trial court's instructions. It is apparent from a reading of the entire transcript that the Government's contention with respect to the $250,000 was that it was extorted from the witness Reinfeld, even though the petitioner's threats were accompanied by assertions of a right to the funds. The petitioner's contention was that he had received the $250,000 by virtue of his interest in Browne Vintners and that the tax upon that amount had already been paid. The trial court instructed the jury that (R. 930):

> If that money was extorted and was paid as a result of threats, then it was taxable income and Rutkin was under the duty of reporting that tax.

This instruction permitted a conviction if the jury accepted the Government's testimony. The trial court further charged (R. 930, 932, 1000):

> Rutkin says that that $250,000 was a final settlement of his claim in Browne Vintners, and if that is so—and the Government does not contend that the capital gains tax was not paid—he would not be obliged to report that income. * * * If he got it properly the tax was already paid.

This instruction permitted an acquittal if the jury accepted the petitioner's testimony. Despite the clarity of the issues involved and the appropriate instructions given, the petitioner nevertheless complains that prejudicial error resulted from the trial court's refusal to give the following requested charge No. 29 (R. 999):

> 29. It is admitted that the capital gains tax on the sale of all of the Browne Vintners stock was paid, and, therefore, if the money which Rutkin received came to him as a result of his interest in Browne Vintners stock, it was not taxable, he was under no obligation to report it in his income tax return for 1943, and he must be acquitted. Even if you believe Rutkin made threats to Reinfeld and that these threats produced the money, if the money was in payment of Rutkin's interest in the Browne Vintners stock, he should be acquitted.

It is apparent, however, as stated by the court below, that the requested charge injected into the

case "a new issue * * * one which was never tried under the indictment * * * *" (R. 1001), and that it was therefore properly refused.

Moreover, as instructed by the trial judge in the last-quoted portion of his charge, the jury could not have convicted petitioner if, in the language of petitioner's requested charge No. 29, "the money was in payment of Rutkin's interest in the Browne Vintners stock". Thus the failure to charge that acquittal should follow if this were the case, even though petitioner's threats also produced the money, could hardly have been prejudicial error, if it was error at all.

CONCLUSION

The judgment of the court below is correct and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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AUGUST, 1951.

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No. 195

In the Supreme Court of the United States

OCTOBER TERM, 1951

JAMES RUTKIN, PETITIONER,

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Court of Appeals (R. 991-1008) is reported at 189 F. 2d 431.

JURISDICTION

The judgment of the Court of Appeals was entered on May 23, 1951. (R. 1009.) A petition for rehearing was denied on June 19, 1951. (R. 1017.) The petition for a writ of certiorari was filed on

July 18, 1951, and was granted on October 8, 1951. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTIONS PRESENTED

1. Whether in the circumstances of this case, money which petitioner falsely claimed was his and was able to persuade another to pay him by means of harassing demands and repeated threats, constituted income under Section 22 (a) of the Internal Revenue Code.

2. If money so obtained is income whether the jury was properly charged.

STATUTE INVOLVED

Internal Revenue Code:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes * * * gains or profits and income derived from any source whatever. * * *

* * * * *

(26 U.S.C. 1946 ed., Sec. 22.)

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax,

and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with costs of prosecution.

* * * * *

(26 U.S.C. 1946 ed., Sec. 145.)

STATEMENT

The petitioner was indicted for willfully attempting to defeat and evade a large part of his income and victory tax for the calendar year 1943. The charge was that he did so by filing a false and fraudulent return in which he stated his net income for that calendar year was the sum of $18,966.64 and that the amount of income and victory tax owing was the sum of $6,843.93, whereas the corrected net income was in fact $268,622.04 upon which he owed an income and victory tax of $222,408.32. (R. 5-6.) On the basis of the jury's verdict of guilty (R. 3), the petitioner was fined $10,000 and sentenced to prison for four years. The judgment of conviction was affirmed by the Court of Appeals for the Third Circuit, one judge dissenting. (R. 1009.)

The sum of $250,000 involved in this case and charged by the Government to be the income of the petitioner in 1943, upon which no tax was paid,

was admittedly transferred by Reinfeld, the principal Government witness, to the petitioner. The Government charged that the payment was made as a result of extortion. The petitioner contended that it was in final settlement of his interest in the Browne Vintners Company, a corporation organized after the repeal of prohibition. It was conceded that if petitioner's version were the correct one, he would be entitled to an acquittal because the capital gains tax had already been paid on moneys transferred in payment for interests in the Browne Vintners Company. (R. 24, 991-992.)

The following is an outline of the evidence favorable to the Government which the jury was entitled to believe:

The history, organization, and liquidation of the Browne Vintners Company.—The witness, Reinfeld, testified that in 1926, during the prohibition period, he and five other men were engaged in what he called a "High Seas venture". This was a bootlegging operation which, as described, consisted in putting "a boat out there beyond the 12-mile limit and different people come and buy whiskey". The enterprise continued until 1932. In 1929, the petitioner came into the group. According to Reinfeld the petitioner did not contribute any money, but "just wanted to be a partner and we took him in". Reinfeld explained that the petitioner was taken in without any monetary contribution because otherwise "we were afraid

that we will get some interference and trouble". (R. 12-18.)

Reinfeld testified that the petitioner was to receive three per cent of the profits. A few months after the inception of the "High Seas venture", one of the members of the organization "said he was going to quit because he had some arguments with Rutkin and he is afraid". (R. 18.) The person did quit and gave his three per cent share to the petitioner. (R. 18-19.)

The "High Seas venture" was liquidated early in 1933. There was an accounting "as to what each partner had". Each member was informed of his interest. The petitioner's percentage interest at that time was six per cent, despite the fact that he had not paid any money into the enterprise. The petitioner was not entitled to any distribution upon the liquidation of the "High Seas venture" because he was then overdrawn to the extent of $35,000, and this fact was brought to his attention. He was given a memorandum showing that he was overdrawn to the extent of $35,000. (R. 22-24, 196, 992.)

In October, 1933, the members of the original "High Seas venture", with the exception of the petitioner, organized the Browne Vintners Company. (R. 24.) The petitioner did not own any of the Browne Vintners stock in his own name or through nominees. He did not have any interest

in any of the assets of the corporation. (R. 24-26, 120.)

Reinfeld testified that in 1936, the petitioner, asserting that he had a six per cent interest in the old company and a continuing six per cent interest in Browne Vintners, demanded $60,000. Reinfeld's reply was: "Jim, you haven't got any money". Nevertheless, Reinfeld gave the petitioner the $60,000 because he liked him and because the petitioner had convinced him that "he is going to be a success". At that time the petitioner signed a document which, among other things, stated that he sold, assigned and transferred to Reinfeld all of his "right, title and interest in and to six per cent of the issued and outstanding shares of capital stock, preferred and common, as of October 1, 1936, of Browne Vintners Co., Inc., a New York corporation, which represents any and all of such shares of capital stock in the said Browne Vintners Co., Inc., that I am entitled to". As to this document, Reinfeld testified that the petitioner delivered it to him saying that "he was paid out in full according to what claims he was making, and I decided to recognize the claims and pay him out in full". (R. 32-33, 289, 290-291.)

At the time the aforementioned document was executed, Browne Vintners was worth approximately $700,000, six per cent of which would be approximately $42,000. The amount of $60,000 which Reinfeld gave the petitioner was more than

the six per cent which the petitioner claimed as his interest in the corporation. (R. 289.)

In 1939, Reinfeld obtained a job for the petitioner with Browne Vintners at $15,000 a year. The petitioner remained in this job from six to eight months. During that period the petitioner became involved in a liquor violation in Boston and asked Reinfeld to lend him $2,500. Reinfeld paid a lawyer named Kessler $2,500 to help petitioner. The petitioner lost his job because of the Boston incident. (R. 36-37, 993.)

Reinfeld and the petitioner had no discussions about Browne Vintners except that occasionally the petitioner asked Reinfeld how business was. The petitioner came to the Browne Vintners offices three or four times during some months and sometimes not for six months. (R. 108.) The petitioner testified that he did not have an office in Browne Vintners but that he used all of the offices indiscriminately. (R. 807.) He stated that he was not an officer of the corporation, did not attend any of the stockholders or directors meetings, gave no orders to any of the officers of the company, and they took no orders from him. He did not know whether his name appeared on the records of the company as a stockholder. (R. 808.)

Joseph Newman, who was connected with Browne Vintners from 1933 to December, 1940, and who was its president for two years, testified that he saw the petitioner at the plant only a couple

of times; that the petitioner did not have an office; did not represent the company in any of its affairs and did not attend stockholders or directors meetings and did not establish any policies or programs. (R. 898-900.) Edward T. Browne, first president of the company, testified that he did not know the petitioner and that he never saw him at the Browne Vintners premises during the time that he was president; that the petitioner did not participate in the business affairs of the company. (R. 903.) John H. Owen, former president and vice-president of Browne Vintners, later an official with McKesson & Robbins, stated that he saw the petitioner at the Browne Vintners offices four or five times; that the petitioner had nothing to do with the business affairs, never participated in policy formation, never did any work at the New York office, and never attended any of the meetings of the stockholders or directors. (R. 908-909.) Mortimer Lowell testified that he did advertising work for Browne Vintners from its inception to the time that it was sold to Seagrams; that he was at the office frequently and never less than once a week and sometimes three or four times a week; that he saw the petitioner there several times and heard his name mentioned, but that the petitioner never gave any orders with respect to advertising and did not participate in any way. (R. 907.)

In 1940, after extensive negotiations, Browne Vintners was sold to Seagrams for $7,500,000.

Debts amounting to $8,000,000 were assumed by the purchaser. (R. 27.) Except for certain moneys withheld for debts and contingencies (R. 128), there was a distribution of the proceeds of the sale. The petitioner did not have any interest in the company at that time. He was not an actual or beneficial owner of any stock. (R. 28.) The sale of the company was not discussed with him. (R. 131.) A list of real stockholders and nominees was compiled by the accountants. (R. 28.) The capital gains tax on all the stock was paid by the record owners. (R. 129.)

The threats.—In 1941, Reinfeld gave the petitioner $10,000 on the latter's representations that he wished to purchase a tavern. The petitioner returned in a week or ten days for more money, at which time Reinfeld accused him of losing the $10,000 at the racetrack. "And that was our first trouble", Reinfeld stated. There was an argument and Reinfeld told the petitioner that he was not going to give him another cent; that he was finished. (R. 38-39.)

Reinfeld testified that in late October or early November, 1942, the petitioner came to his office at Browne Vintners and started off by saying to him, "Where is my money? * * * You all done well, you all made a lot of money, what about me?" Reinfeld answered, "What do you want from me now that you threw all your money away? I haven't got your money". The petitioner insisted

that Reinfeld give him $100,000 to pay his debts. There was an argument and Reinfeld said that the petitioner threatened him. Asked to tell about this in detail Reinfeld said, "Well, he had his hand in his pocket (indicating) and said that he would kill me if I didn't give him the money in three days". Then, said Reinfeld, the petitioner "run out". Reinfeld stated that because of the incident he cancelled some appointment that he had and that he "was disgusted and discouraged with business and everything". (R. 40-42.)

A couple of weeks later the petitioner again came in to Reinfeld's office, pushed the latter's secretary aside, and told Reinfeld "that if I don't give him that money that he is going to kill me". At that time the petitioner's demand went up to $150,000. Reinfeld was then asked, "What happened to you about this time, if anything?" He answered, "Well, I took sick". (R. 42-43.)

A week or two later the petitioner came to Reinfeld's New York hotel room and saw him there. Reinfeld said he did not remember what the petitioner said but that it was "nothing bad". As the petitioner was leaving, Reinfeld followed him to the door, and then, Reinfeld states that Rutkin "opened the door and started to walk out. He turned around and put a gun on me" saying "you get well and get me that money". At that time his figure was $200,000. He said, "Get me $200,000 or I will kill you". Sometime later, no specific

date being fixed, at a time when Reinfeld stated he was just getting well, the petitioner telephoned him, told him that he was sick and started to apologize. The petitioner sounded over the telephone as though he were crying. Reinfeld said that he felt bad about this and agreed to go to the petitioner's hotel to see him. He did go to the hotel. The petitioner told him that he had not slept since he had been up to see Reinfeld and that he must have been crazy or something. Reinfeld stated that he felt very sorry for the petitioner and said, "Let's forget the whole thing". The petitioner told him that he owed $4,000 for room rent and some other things and asked him for money. Reinfeld went out, obtained $5,000 and brought it back to him. Then, stated Reinfeld, "he told me if I could only give him another $5,000, how much he will think of me and all that. So I gave him another $5,000 at about 5 or 6 o'clock that afternoon". (R. 43-44.)

Within a month, at the home of his brother-in-law, Reinfeld again saw the petitioner. (R. 50.) There the petitioner stated that he was going to kill Reinfeld and Reinfeld's family if he did not get his money. (R. 51, 230-231.)

Later the same day, when certain negotiations between Reinfeld and others had been completed, Kessler, an attorney who had arbitrated these other matters that day, asked Reinfeld, "How about Mr. Rutkin?" Reinfeld asked: "Well, what is his claim?" Kessler replied: "Well, you been

friends, you slept with him for a long time; now go in in the other room and give him some money and get through with it". (R. 47, 223-224.) Reinfeld and the petitioner went into another room. The petitioner had first wanted half a million dollars and finally said he would take $250,000. Reinfeld agreed to pay this amount because "I wanted to get rid of him anyway and get this off my mind, because I carried it long enough. I was a sick man. So I agreed". (R. 47, 225-226, 994-995.)

Several weeks after the meetings just described but before the actual payment of the $250,000 here involved, the petitioner telephoned the office of the Jos. A. Reinfeld Company. Lou Holtz, Reinfeld's brother-in-law, answered and recognized the petitioner's voice. The petitioner said something about the fact that Reinfeld was sick and that if anything happened to him he would hold Reinfeld's family responsible for the money which he claimed; that if he did not get it he would kill the whole family. (R. 231-232.)

Two hundred and fifty thousand dollars was actually paid over to the petitioner on May 11, 1943, in exchange for a general release from him in favor of Reinfeld, the latter's brothers, Browne Vintners Company, Inc., and others. (R. 52-53, 269.)

SUMMARY OF ARGUMENT

I

The $250,000 petitioner obtained from the witness Reinfeld as a result of threats and harassing

demands was his income within the meaning of Section 22(a), Internal Revenue Code. Although the manner of the taking unquestionably constituted the criminal offense of extortion under New Jersey law, it is settled by controlling decisions of this Court and required by the legislative history and the all inclusive language of Section 22(a) that illegality is no bar to taxability.

Petitioner had income because he had complete control over and economic benefit from the money—attributes of ownership equally or more substantial than those which justified the tax in the landmark decisions of this Court interpreting Section 22(a). Those decisions make plain beyond any question that petitioner's contention that he had no title—even if he is correct in this on the facts of this case—is quite immaterial. The tax, as this Court has said time and again, is predicated on the practical substance of the transaction, the economic benefits and command over the property taxed—the actual benefit for which the tax is exacted—rather than on technical refinements of title.

Nor is it possible to conclude that the money was not income because petitioner might be required to restore its equivalent. Where a taxpayer has received money under circumstances where his right to keep it is being contested or may be contested, the rule is firmly entrenched that it is nevertheless his income if (1) he claims of right and (2) there is no restriction on its disposition. The

phrase "claim of right" was adopted by this Court, and consistently applied—not to distinguish honest from dishonest claims—but to distinguish receipts claimed by the taxpayer as his from money or property which he receives as a mere borrower, conduit, or stakeholder.

This Court's decision in *Commissioner* v. *Wilcox*, 327 U.S. 404, virtually petitioner's sole reliance here, does not support him. Although the Court there held that embezzled funds were not income, it did so because it thought that an embezzler was like a borrower. Accepting this premise, although it has been widely criticized, there can be no question that Wilcox did not claim of right, i.e. adversely to the owner—the historical and pragmatic meaning of the concept—and accordingly he had no income. Here there was no "bare receipt" of the money as the Court said was true in *Wilcox*, but an open and adverse claim to it not only as against the whole world except the real owner, but as against him too.

Although there is language in *Wilcox* which if read as broadly as petitioner would like, would necessitate the conclusion that petitioner did not have income, it would equally necessitate the conclusion that most, if not all, illegal income is not taxable, contrary to overwhelming judicial authority to say nothing of the Congressional intention and understanding. It is inconceivable that the Court, without mention, would have intended such a radical departure from so many fundamentals of tax law, request to charge No. 29) is without foundation.

Moreover, whether illegal income is taxable, if at all, would turn, under petitioner's view of *Wilcox*, on varying provisions of state law having no logical relevance to the criteria of Section 22(a) as repeatedly interpreted by this Court in other cases. To make state law determinative would be contrary to the well entrenched and salutary rule of construction that it will be presumed that Congress intended a uniform application of the revenue laws throughout the several states and therefore state law may control only when the Internal Revenue Code by express language or necessary implication makes its operation dependent on state law.

Finally, it is well known that the revenue laws have been an important sanction in the fight against crime. Whatever may be said against this use of the revenue laws, there can be no question either as a matter of discerning a specific Congressional purpose or applying "public policy", the revenue laws should not be interpreted in a manner discriminating in favor of the criminal element. Yet such would be the effect of the approval of petitioner's position.

II

Petitioner's contention that prejudicial error resulted from the court's failure to charge the jury that if petitioner used threats to obtain money owing to him as a result of his interest in Browne Vintners stock he should be acquitted (petitioner's

Petitioner wrongly asserts that the court's charge, as given, could be interpreted to mean that petitioner should be found guilty if he used threats to collect his own money. The court's charge made perfectly plain that petitioner could be convicted only if he in fact had no interest in Browne Vintners stock and used threats to collect the money. Any possible ambiguity is completely dispelled when the charge is read in the light of the evidence adduced at the trial and of the parties' contentions.

In any event, although petitioner had ample opportunity to do so, he took no exception to the court's refusal to make the charge in question and, accordingly, the court had no opportunity to amend its charge as it might have done had the question been raised. Under these circumstances, Rule 30, Federal Rules of Criminal Procedure, is by its terms expressly applicable and prevents assignment of error on this point.

Contrary to petitioner's contention the jury was properly instructed on all elements relating to whether petitioner had income. The only factual controversy was whether petitioner had a legal right to the money or whether he was an extortioner. If the latter, as the jury concluded, petitioner had income. No dispute existed between the parties that petitioner claimed adversely to Reinfeld and, of course, the world; accordingly, there was no question for the jury as to whether such a claim was asserted.

III

The other questions which petitioner urges in his brief were not raised in the petition for a writ of certiorari and are accordingly not now before the Court. In any event, they are without merit.

ARGUMENT

Introductory

The petitioner was indicted, tried and convicted pursuant to Section 145(b) of the Internal Revenue Code, *supra*, pp. 2-3, for wilfully attempting to defeat and evade a large part of his income and victory tax for 1943. The charge was that he did so by filing a false and fraudulent return in which he understated his net income by $250,000. (R. 5-6.)

The petitioner admits having received $250,000 in 1943 which he did not return as his income. His defense was that the $250,000 was paid to him by Joseph Reinfeld in payment of his stock interest in Browne Vintners Company which was liquidated by the sale of its assets in 1940 to Seagrams. The Government conceded that if petitioner in fact had a stock interest in Browne Vintners for which the $250,000 was paid, he should be acquitted because the tax had already been paid on the Browne Vintners' liquidating dividend.[1] But petitioner's

[1] The record discloses that much of the stock in Browne-Vintners was held by nominees. The nominees reported the income, paid the tax and transmitted the difference to the real owners. (R 205.) Although on a strict construction of the

version of the facts was controverted by the Government's charge that petitioner had never owned any interest in Browne Vintners and that the $250,000 was paid to him solely as a result of harassing demands and repeated threats against Reinfeld and members of his family.

The petition for certiorari raised no question, nor could there be any—as the Statement, *supra*, indicates—that there was not substantial competent evidence in support of the Government's view. See *Abrams* v. *United States*, 250 U.S. 616, 619; *Glasser* v. *United States*, 315 U.S. 60; *Mortensen* v. *United States*, 322 U.S. 369. The questions for decision here are rather whether (1) on the facts most favorable to the Government's theory, did the petitioner have taxable income and (2) if so, was the jury properly charged so that its verdict reflected that theory.

I

The Court Below Correctly Held that the Sum of $250,000 Obtained by the Petitioner as a Result of Harassing Demands and Repeated Threats on Reinfeld's Life Constitutes Taxable Income Within the Meaning of Section 22(a) of the Internal Revenue Code

This Court held in *Commissioner* v. *Wilcox*, 327 U.S. 404, that embezzled money was not income.

Internal Revenue Code, the proceeds of the sale perhaps should have been reported by the beneficial owners, the Government's concession was motivated by the consideration that the failure to report the proceeds would hardly have been the basis for predicating a charge of wilful attempt to evade and defeat the tax within the meaning of Section 145(b).

Although we think now, as we did then, that a better result would have been to treat embezzled funds as income,[2] we do not ask, nor is it necessary, that

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[2] The decision in *Commissioner* v. *Wilcox, supra,* has been widely criticized. There has been almost complete agreement that in any event it should be limited to its facts. The American Law Institute, Federal Income Tax Statute (Tentative Draft No. 4, April 24, 1951, p. 148), proposes an amendment to the Code expressly designed to change the result in *Wilcox*. The proposal is that gross income shall include (p. 13) "Proceeds of bribery, blackmail, embezzlement, theft, or other illegal acts." The Law Institute's commentary on this proposal is as follows (p. 148):

> Subsection (b) (20) changes present law as respects the proceeds from an embezzlement, making such proceeds income contrary to the Supreme Court decision in *Comm'r* v. *Wilcox*, 327 U.S. 404 (1946). The lower courts are having trouble with the decision when faced with other illegal activities, as swindling (*Akers v. Scofield*, 167 F. 2d 718 (5th Cir. 1948)), or diversion of corporate funds by the principal stockholder-officer (*Currier v. United States*, 166 F. 2d 346 (1st Cir. 1948), and *United States v. Chapman*, 168 F. 2d 997 (7th Cir. 1948)). The result, if the doctrine continues unmodified, is apt to be a series of decisions difficult of reconciliation, especially since the lower courts are attempting to restrict the *Wilcox* decision. It is believed desirable to tax such proceeds, with a subsequent deduction to the embezzler if he repays the funds, rather than to have embezzlement (and perhaps a few other activities) end up with a treatment different from that accorded most illegal acts. * * *

The Law Review and Bar Journal commentaries have been almost universally critical of not only the reasoning in *Wilcox* but of the result. 7 Ala. Law. 332 (1946); 34 Cal. L. Rev. 449 (1946); 46 Col. L. Rev. 677 (1946); 44 Mich. L. Rev. 885 (1946); 18 Okla. Bar Assn. J. 1752 (1947); 20 So. Cal. L. Rev. 113 (1946); 25 Texas L. Rev. 693 (1947); 58 Yale L. J. 955, 962-963 (1946), especially footnotes 38 and 39. Those commentaries that agreed with the result generally did so on the basis of the peculiar facts and predicted that the case would not be extended to other types of illegal income. 9 Ga. Bar J. 107 (1946); 22 Ind. L. J. 99 (1946); 30 Minn. L. Rev. 308 (1946). The lower courts have in fact limited *Wilcox* to its own facts. See footnote 3, *infra*.

Wilcox be repudiated in order to conclude here that petitioner's extorted money was income. The only problem which *Wilcox* presents in the present context arises not at all from the *Wilcox* result but only from some language in the opinion which, if applied as petitioner urges (Br. 29-35), would not only be inconsistent with the most basic concepts of taxable income, as enunciated in decisions long antedating *Wilcox* and with which the *Wilcox* result harmonizes, but would serve to exempt most, if not all, illegal gains from taxation. The Court, in *Wilcox*, obviously intended no such radical departure from tax fundamentals.

A. *Illegality of receipts is not a bar to taxability*

This Court did not by its decision in *Wilcox* intend to preclude treating illegal receipts as such as income.[3] On the contrary it stated: "That the taxpayer's motive may have been reprehensible or the mode of receipt illegal has no bearing upon the application of § 22(a)." 327 U.S. 404, 408. This express disavowal of any intention to immunize from taxation gain otherwise taxable merely be-

[3] The lower courts without exception have so understood *Wilcox*. *United States* v. *Rosenblum*, 176 F. 2d 321 (C.A. 7th), certiorari denied, 338 U.S. 893; *United States* v. *Chapman*, 168 F. 2d 997 (C.A. 7th); *Akers* v. *Scofield*, 167 F. 2d 718 (C.A. 5th), certiorari denied, 335 U.S. 823; *Currier* v. *United States*, 166 F. 2d 346 (C.A. 1st), affirming 70 F. Supp. 219 (D. Mass.); *Cutcliffe* v. *Commissioner*, 163 F. 2d 891 (C.A. 5th), affirming the Tax Court's memorandum decision of July 31, 1946 (1946 P-H T.C. Memorandum Decisions, par. 46,184); *Petit* v. *Commissioner*, 10 T.C. 1253.

cause it resulted from illegal activity was required by *United States* v. *Sullivan*, 274 U.S. 259, and *Johnson* v. *United States*, 318 U.S. 189. The conclusion is epitomized by Mr. Justice Holmes' statement in *United States* v. *Stafoff*, 260 U.S. 477, 480, involving an excise tax that "Of course Congress may tax what it also forbids."[4]

Sullivan affirmed the decision of the Court of Appeals that gains from illicit liquor traffic were taxable under the Revenue Act of 1921, c. 136, 42 Stat. 227. The Court relied on the broad language of Section 213(a) of the 1921 Act, in all material respects identical with Section 22(a) of the Internal Revenue Code, *supra*, p. 2, and pointed out that the Revenue Act of 1916 had omitted the limiting adjective "lawful" contained in the 1913 Act. It concluded (p. 263) that, "We see no reason to doubt the interpretation of the Act," adding, "or any reason why the fact that a business is unlawful should exempt it from paying the taxes that if lawful it would have to pay."

It cannot be doubted, then, that Section 22(a), as interpreted by this Court, encompasses the $250,000 petitioner received notwithstanding the

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[4] The largely philosophical difficulty which other courts had experienced in subjecting to income tax the fruits of activity prohibited by law (see, e.g., *Steinberg* v. *United States*, 14 F. 2d 564 (C.A. 2d); *United States* v. *Wampler*, 5 F. Supp. 796, 797 (D. Md.); *Smith* v. *Minister of Finance*, 2 Dom. L. R. 1137 (1925), reversed (1927) A.C. 193; *Graham* v. *Green*, 2 K.B. 37 (1925); *Southern* v. *A. B.*, 1 K.B. 713 (1933)), seems never to have been shared by this Court.

illegality of the transaction if, but for the illegality, it would be income.

B. *Petitioner's receipt of the money under an asserted claim that it was his together with his complete control over, and economic benefit from, it made it clearly his income under the landmark decisions of this Court.*

There is not the slightest question that Reinfeld knowingly and intentionally paid the $250,000 to the petitioner. There is no question either that petitioner received it as his, with no intention of repaying it to Reinfeld. Neither of these significant circumstances was true of the taking in *Wilcox*. It is equally the fact that petitioner at all times exercised complete dominion and control over the money and on the basis of every practical use to which money can be put, he had every attribute of full ownership. Since the "broad sweep * * * [of Section 22(a)] indicates the purpose of Congress to use the full measure of its taxing power" (*Helvering* v. *Clifford*, 309 U.S. 331, 334; *Commissioner* v. *Wilcox*, *supra*, p. 407), these most significant attributes of ownership are more than a sufficient basis on which to predicate the tax.

Petitioner's contention (Br. 33-35) that he did not have "title" is beside the point. Assuming that he did not, "title" has been repeatedly rejected as a limitation on the scope of Section 22(a). Taxation, as the Court has noted, is an "eminently

practical" matter. *Tyler* v. *United States*, 281 U.S. 497, 503; *United States* v. *Jacobs*, 306 U.S. 363, 370. The reach of the taxing Acts is to be determined by the practical substance of transactions, the location of economic benefits, and by the "actual command over the property taxed—the actual benefit for which the tax is paid," rather than by the technical refinements of title. *Corliss* v. *Bowers*, 281 U.S. 376, 378. *Lucas* v. *Earl*, 281 U.S. 111, 114-115; *Burnet* v. *Leininger*, 285 U.S. 136, 141-142; *Burnet* v. *Guggenheim*, 288 U.S. 280; *Burnet* v. *Wells*, 289 U.S. 670, 678; *Estate of Sanford* v. *Commissioner*, 308 U.S. 39; *Griffiths* v. *Commissioner*, 308 U.S. 355; *Higgins* v. *Smith*, 308 U.S. 473; *Helvering* v. *Clifford*, *supra*; *Helvering* v. *Horst*, 311 U.S. 112.

As a practical matter—as a matter of economic benefit and of power over the amount in question—petitioner had income under the landmark decisions of this Court, *supra*, defining the scope of Section 22(a). Nor can it be doubted that as a matter of "Common understanding and experience * * * the touchstones for the interpretation of the revenue laws" (*Helvering* v. *Horst*, *supra*, p. 118), petitioner also had income. It would be impossible for the man in the street to understand why petitioner's $250,000 was not as fully amenable to the income tax as money honestly earned.

C. *Petitioner asserted a claim to the $250,000 adverse to the whole world; accordingly, he claimed of right within the meaning of North American Oil* v. *Burnet and United States* v. *Lewis.*

Analysis of the *Wilcox* opinion, 327 U.S. 404, shows that the Court viewed the situation there as analogous to the receipt of a "loan or credit." (P. 408.) "The debtor-creditor relationship was definite and unconditional." (P. 409.) "* * * the bare receipt of property or money wholly belonging to another lacks the essential characteristics of a gain or profit within the meaning of §22 (a)." (P. 408.) Whether or not the analogy between Wilcox, the embezzler, and a debtor be deemed complete or accurate, it is plain enough that here there was no relationship even remotely akin to that of debtor and creditor. As we have already noted, the evidence was unequivocal that Reinfeld transferred the money intentionally and with no thought of subsequent repayment.[5] Petitioner, on the other hand, received the money as his and claimed it, not as in *Wilcox* "against all the world except the true owner" (p. 407), but as against Reinfeld too. This was not "the bare receipt of * * * money." (P. 408.)

[5] In the *Wilcox* case, it was stipulated that "The taking of said sum as aforesaid has never been condoned nor forgiven by the employer, and it always has and now does hold the taxpayer liable to restore the same." Record in No. 163, October Term, 1945, p. 18.

Borrowed funds are not income nor does a stakeholder have gain. Such receipts, like a return of capital, are never properly taxable. It was to distinguish these receipts from true income that the "claim of right" concept was adopted in *North American Oil* v. *Burnet*, 286 U.S. 417, 424, applied in *Wilcox* and recently reaffirmed in *United States* v. *Lewis*, 340 U.S. 590, rehearing denied, 341 U.S. 923.

In *North American* the Court stated (p. 424):

> If a taxpayer receives earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent.

The income in controversy arose from property which a receiver held impounded pending litigation between the United States and North American Oil Company as to the ownership of the property. Income earned from the property in 1916 was turned over to the company in 1917 upon entry of a final decree in the District Court dismissing the bill of the United States. The appellate phases of the litigation terminated favorably to North American in 1922. The question was whether the income should have been reported in 1916, 1917 or 1922. This Court held (p. 424) that the profits became income of North American in 1917 "when

it first became entitled to them and when it actually received them." In so doing, it rejected North American's contention that it was, in essence, a stakeholder, and that it might eventually have to return the money. The phrase, "claim of right," was applied to the income not in contradistinction of wrongful or specious claims—for no such question was involved—but to distinguish amounts received and claimed regardless of the rights of others, as against amounts received with recognition of the ownership of another—"the bare receipt of property or money wholly belonging to another" which, as already emphasized, was the Court's language to describe the embezzled funds in *Wilcox*, 327 U.S., at 408.

That this was the sense in which the phrase was used is confirmed by the fact that "claim of right" was unknown in tax decisions prior to *North American* although it had a well defined real property connotation. The "claim of right" which courts require to establish adverse possession in land is the objective manifestation of an intention to use property as one's own regardless of interests of others. See *Bowden-Gazzam Co.* v. *Hogan*, 22 Wash. 2d 27, 34-37, 154 P. 2d 285, 289-290; *Rupley* v. *Fraser*, 132 Minn. 311, 313, 156 N. W. 350, 351. "Right" and "title" were not thought to be synonymous. As pointed out in Tiffany, *Real Property* "* * * by claim of right or title, in connection with the doctrine of adverse possession, is meant merely 'an intention to appropriate and

hold the land as owner, and to the exclusion, rightfully or wrongfully, of every one else." 4 Tiffany, *Real Property* (3d ed., 1939), p. 444. See, also, Sedgwick & Wait, *Trial of Title to Land* (2d ed.), Sec. 756; *Bond* v. *O'Gara*, 177 Mass. 139, 58 N. E. 275; *Fear* v. *Barwise*, 93 Kan. 131, 143 Pac. 505. Tiffany makes plain that there is "general acceptance of the view" in the absence of express statutory requirement that "the statute will run regardless of whether the wrongful possession was taken under a bona fide claim of right." (P. 445.)

We think it plain that the Court not only borrowed the phrase itself from real property law but also used it in its real property sense. This use in *North American* of "claim of right," together with the further requirement that in order to have taxable income there be no restriction as to disposition regardless of the claim of others and regardless of an ultimate liability to restore its equivalent, appropriately distinguishes borrowed money from income.[6] The use of the claim of right phrase in *Wilcox*, to deal with the problem expressed in the opinion of not taxing funds which the Court believed so closely resembled a debt, was

[6] Distinguishing borrowed money from income, together with distinguishing income from capital has been the important concern of the courts in the application of Section 22(a). See Magill, Taxable Income (Revised ed., 1945), cited in *Wilcox* in another connection (p. 377):

> In these cases * * * the Court has been concerned with source in drawing the line between capital and income, not in distinguishing legal from illegal operations.

entirely in accord with the use of the phrase in *North American* and in the vast number of cases applying the concept.[7] Unless *Wilcox*—which as noted *supra* disavowed this purpose—has added the necessity of distinguishing between legal and illegal income, though explicitly disavowing any such intention, the claim of right phrase was never intended to be, and has never been, so employed.

D. *Petitioner's interpretation of Commissioner v. Wilcox if literally and generally applied, would immunize from income taxation most, if not all, illegal income, a result neither required by, nor anticipated by, that decision*

It is plain, then, that Wilcox, given the Court's hypothesis that embezzled funds were like borrowed funds (see *supra*, p. 24) did not claim of right within the meaning of *North American*. The difficulty with the opinion is not that it in any sense misapplied the concept to reach the result there

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[7] Representative cases in addition to *United States* v. *Lewis*, 340 U.S. 590, are the following: *Boston Consol. Gas Co.* v. *Commissioner*, 128 F. 2d 473 (C.A. 1st); *St. Regis Paper Co.* v. *Higgins*, 157 F. 2d 884 (C.A. 2d); *Clay Sewer Pipe Ass'n* v. *Commissioner*, 139 F. 2d 130 (C.A. 3d); *Anderson* v. *Bowers*, 170 F. 2d 676 (C.A. 4th), certiorari denied, 337 U.S. 918; *Akers* v. *Scofield*, 167 F. 2d 718 (C.A. 5th), certiorari denied, 335 U.S. 823; *Haberkorn* v. *United States*, 173 F. 2d 587 (C.A. 6th); *Griffin* v. *Smith*, 101 F. 2d 348 (C.A. 7th), certiorari denied, 308 U.S. 561; *Fleischer* v. *Commissioner*, 158 F. 2d 42 (C.A. 8th); *Commissioner* v. *Alamitos Land Co.*, 112 F. 2d 648 (C.A. 9th), certiorari denied, 311 U.S. 679; *Saunders* v. *Commissioner*, 101 F. 2d 407 (C.A. 10th); *Barker* v. *Magruder*, 95 F. 2d 122 (C.A. D.C.).

reached, but that in transplanting the doctrine from *North American*, the language of the earlier decision was unaccountably changed in a manner not serious in its context but which, as petitioner would apply it, would have the most drastic, and we are certain, unintended results.[8] *Wilcox* (p. 408) added the qualification to the phrase, "claim of right"—that it be "bona fide legal or equitable,"[9] which it erroneously credits to *North American* and a further requirement hitherto absent in the claim of right cases that there be absent (p. 408) "a definite, unconditional obligation to repay or return that which would otherwise constitute a gain." Assuming as we think plain, that some, if

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[8] It may be significant that despite Mr. Justice Burton's forceful disagreement with the *Wilcox* result expressed in his dissenting opinion (327 U.S., at pp. 410-416) no part of the disagreement was based on his understanding that the majority intended to cast any doubt on the taxability of other types of illegal income. On the contrary, his express understanding of the majority view was that extorted funds would still be taxable (p. 414):

> If he [Wilcox] had gained possession of the original funds by extortion, fraud or usurious practices, those gains would be taxable to him under the general language of §22(a). The majority opinion, however, holds that if he gained possession of the original funds by embezzlement then such gains are not to be taxed to him under that language. This reads into the section a sharp distinction between the embezzler and defrauder, exempting the former but not the latter. In the absence of an express declaration of such an intent by Congress, I believe that the courts are not justified in reading such a distinction into this section.

[9] The opinion is not entirely clear that a bona fide claim is in fact a requirement because it suggests later (327 U.S., pp. 408) that a "semblance of a bona fide claim of right" may be sufficient.

not most, illegal receipts are income, the qualifying phrase "bona fide or equitable" to the claim of right doctrine was peculiarly inappropriate for general application. It is a considerable strain on the plain meaning of "bona fide legal or equitable" to conclude that any wrongdoer so receives the gain from his illegal activity. And if, as petitioner contends (Br. 30), the requirement of *Wilcox* that there be absent a definite unconditional obligation to repay or return the sum in controversy assumes that no cause of action exists at the time of receipt through which the recipient of the money can be forced to repay, it is doubly plain that most illegal receipts are not income. If the *Wilcox* claim of right criteria, as interpreted by the petitioner here, and not the criteria of *North American Oil*, were intended to be applied in non-embezzlement situations, as petitioner urges, a vast number of the decided cases including most, if not all, of those involving illegal gain, in fact were repudiated *sub silentio* by *Wilcox*.[10]

The following situations—all involving income from illegal sources and in all of which courts have held the taxpayer had income—were those in which the taxpayer—as petitioner interprets those re-

[10] *Wilcox* not only did not purport to do so, but actually cited, apparently with approval, cases which could not have been decided as they were under the *Wilcox* dicta. See footnote 7, 327 U.S., p. 409. This confirms Justice Burton's understanding that the majority was distinguishing embezzled funds from extorted, fraudulently acquired or usurious receipts. 327 U.S., p. 414. See footnote 7, *supra*, p. 28.

quirements—either (1) did not have a bona fide legal or equitable claim to the money or (2) was under a definite unconditional obligation to repay or to return the money, or both: *Johnson* v. *United States*, 318 U.S. 189 (money paid to a political leader to "protect" against police interference in numbers game);[11] *United States* v. *Sullivan*, 274 U.S. 259 (illicit traffic in liquor); *Cohen* v. *Commissioner*, 176 F. 2d 394, 396 (C.A. 10th), (payments received for protection from state and county law enforcement in operation of illicit liquor and gambling establishment); *United States* v. *Rosenblum*, 176 F. 2d 321 (C.A. 7th), certiorari denied, 338 U.S. 893 (black market profits); *United States* v. *Chapman*, 168 F. 2d 997 (C.A. 7th) (black market overcharges withheld by corporate officer from corporation); *Akers* v. *Scofield*, 167 F. 2d 718 (C.A. 5th), certiorari denied, 335 U.S. 823 (swindling); *Currier* v. *United States*, 166 F. 2d 346 (C.A. 1st) (checks of corporation appropriated by principal stockholder); *Cutcliffe* v. *Commissioner*, 163 F. 2d 891 (C.A. 5th) (receipts from lottery); *Caldwell* v. *Commissioner*, 135 F. 2d 488 (C.A. 5th)

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[11] The *Johnson* decision of this Court is perhaps more noteworthy here for what it did not say than for what it did. The amenability of the wages of sin to the income tax had become so well entrenched that by the time the case was considered by the Court, it apparently did not even occur to counsel or the Court to question the taxability of such illicit gain. Yet it is plain that *Johnson* neither had a bona fide legal or equitable claim to the money which was paid to him in order that he would improperly influence and bribe law enforcement officials to be derelict in their duty.

(bribes); *Humphreys* v. *Commissioner*, 125 F. 2d 340 (C.A. 7th), certiorari denied, 317 U.S. 637 (protection payments to a racketeer and ransom paid to a kidnapper); *National City Bank* v. *Helvering*, 98 F. 2d 93 (C.A. 2d) (illicit profits by a corporate officer); *Barker* v. *Magruder*, 95 F. 2d 122 (C.A. D.C.) (usurious interest); *Chadick* v. *United States*, 77 F. 2d 961 (C.A. 5th), certiorari denied, 296 U.S. 609 (graft); *United States* v. *Commerford*, 64 F. 2d 28 (C.A. 2d) (bribes); *Steinberg* v. *United States*, 14 F. 2d 564 (C.A. 2d) (illicit traffic in liquor); *Patterson* v. *Anderson*, 20 F. Supp. 799 (S.D. N. Y.) (unlawful insurance policies); *United States* v. *Wampler*, 5 F. Supp. 796 (D. Md.) (monies of a client fraudulently misapplied by an attorney); *Petit* v. *Commissioner*, 10 T. C. 1253 (black market in sugar by means of forged ration stamps); *Droge* v. *Commissioner*, 35 B.T.A. 829 (lotteries); *Huntington* v. *Commissioner*, 35 B.T.A. 835 (lotteries); *Rickard* v. *Commissioner*, 15 B.T.A. 316 (illegal prize-fight pictures); *Weiner* v. *Commissioner*, 10 B.T.A. 905 (card playing); *Voyer* v. *Commissioner*, 4 B.T.A. 1192 (lotteries); *McKenna* v. *Commissioner*, 1 B.T.A. 326 (racetrack bookmaking).

The incongruity, indeed impossibility, of accepting petitioner's interpretation of the *Wilcox* language is illustrated by applying the suggested criteria to receipts from gambling, perhaps the most

widespread, and under our mores the most venial, type of illegal activity. In most states where gambling is illegal, we submit that the recipient has no more nor no less a bona fide legal or equitable claim of right to his winnings than has petitioner to the $250,000 he extorted from Reinfeld. Both types of transactions are contrary to law, and, while petitioner's crime is the more heinous,[12] there is no such thing as a little illegality. But whether we are correct in this view, there can be no question at all that in the large number of states that treat a gambling agreement as void and give the loser, an informer, or the state a cause of action to recover the lost money or property [13] the winner cannot be said to have received his winnings without "a definite, unconditional obligation to repay or return" them as petitioner would interpret the language quoted from *Wilcox*.

The result in cases involving gambling would, then, turn on the vicissitudes of state law not only contrary to the known intention and understanding of Congress that gambling proceeds are gross income within the meaning of Section 22(a) re-

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[12] Extortion is punishable in New Jersey as a high misdemeanor. New Jersey Statutes, Ann., Sec. 2:127-4.

[13] For example, New Jersey, where petitioner is resident (New Jersey Statutes, Ann., Secs. 2:57-9 and 2:57-5); Georgia (Georgia Code, Ann., Sec. 26-6501, discussed in *Cutcliffe* v. *Commissioner*, decided July 31, 1946 (1946 P-H T.C. Memorandum Decisions, par. 46,184, affirmed on this point, 163 F. 2d 891 (C.A. 5th)); Alabama (9 Alabama Code of 1940, Sec. 44, and see 7 Ala. Law. 332, 334 (1946)).

gardless of state law provisions as to illegality,[14] but contrary to the firmly entrenched and sound rule of construction of this Court that "Congress establishes its own criteria and the state law may control only when the federal taxing act by express language or necessary implication makes its operation dependent upon state law."[15] *Lyeth* v. *Hoey*, 305 U.S. 188, 194; *United States* v. *Pelzer*, 312 U.S.

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[14] Section 23(h), Internal Revenue Code, provides that "Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions." It is evident that the section is not meaningful if wagering transactions do not give rise to gain. The provision originated as Section 23(g) of the Revenue Act of 1934, c. 277, 48 Stat. 680. The House Report on the Committee Bill, H. Rep. No. 704, 73d Cong., 2d Sess., p. 22 (1939-1 Cum. Bull. (Part 2) 554, 570) states:

> Section 23(g). Wagering losses: Existing law does not limit the deduction of losses from gambling transactions where such transactions are legal. Under the interpretation of the courts, illegal gambling losses can only be taken to the extent of the gains on such transactions. A similar limitation on losses from legalized gambling is provided for in the bill. Under the present law many taxpayers take deductions for gambling losses but fail to report gambling gains. This limitation will force taxpayers to report their gambling gains if they desire to deduct their gambling losses.

And see H. Rep. No. 586, 82nd Cong., 1st Sess., p. 55, relating to the Revenue Act of 1951 where the Committee on Ways and Means, in connection with the now enacted excise tax on wagering (see footnote 19, *infra*, p. 39), stated: "Since its inception, the Federal income tax has applied without distinction to income from illegal as well as legal sources, and it has never been generally supposed that such application carried with it any implied authorization to carry on illegal activities." See also S. Rep. No. 781, 82nd Cong., 1st Sess., p. 113.

[15] *Akers* v. *Scofield*, 167 F. 2d 718 (C.A. 5th), certiorari denied, 335 U.S. 823, presents another example of the properly irrelevant inquiries into state law that will become the test of the taxability of illegal receipts unless the *Wilcox* opinion is

399, 402; *Estate of Putnam* v. *Commissioner*, 324 U.S. 393, 394.

E. *There are compelling practical considerations present here but absent in Commissioner v. Wilcox which require the conclusion that petitioner had income.*

Since, as already stated, this Court has repeatedly observed that taxation is a practical affair, additional observations concerning the practical implications of petitioner's position should be made.

1. In *Commissioner* v. *Wilcox*, 327 U.S. 404, 410, the Court concluded its discussion of the income question by stating, "Sanctioning a tax under the circumstances before us would serve only to give the United States an unjustified preference as to part of the money which rightfully and completely belongs to the taxpayer's employer." Although we think that Mr. Justice Burton's dissenting observation (p. 414) on the immateriality of the possible unfairness to the wronged person as a factor in deciding whether the wrongdoer had income is

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clarified. There the court held that under Texas law a swindler receives voidable title, hence he has income. But the difference between larceny by fraud in which title generally does not pass and larceny by trick in which it usually does (in Texas, swindling) is a fine one. See 18 Okla. Bar Assn. J. 1752, 1753 (1947). It is difficult indeed to see why taxability should be predicated on such distinctions in this field when the court has repeatedly refused to do so in the field of legal receipts.

in logic unanswerable,[16] since the Court has adopted this reasoning, it should be pointed out that no such hardship can arise here because, as already noted, Reinfeld has never claimed the money nor is it legally possible for him to do so now. And while it is true that the existence of income must be judged by the situation existing in the year when it is said to arise, that is no answer here because a fundamental distinction on the practical level between embezzled funds taken without the owner's knowledge, and extorted funds taken with his knowledge and with his consent elicited through threats, is that the former usually will, as in fact occurred in *Wilcox*, seek restitution, but the latter, as in fact occurred here, usually will not. The same fear of bodily injury and desire for peace of mind that motivate the Reinfelds to satisfy extortioners' demands will usually deter them from pursuing their legal remedies. Similarly, fear of exposure or reprisals and difficulty of proof will effectively deter those who make payments to racketeers or lose at games of chance.

Whatever the merits, then, of taking into consideration the possibility of the Government's lien

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[16] Mr. Justice Burton stated:

> A point has been made of the fact that the Government's tax lien upon property of the embezzler would have priority over the claim of the victim of the embezzlement to recover from such property the losses which the victim suffered by the embezzlement. This priority of the tax lien is hardly an adequate argument to eliminate the tax itself. At most it is an argument for Congress to modify the tax lien in favor of the victim.

defeating in part the chance of the victim of embezzlement to recoup his loss, it has no practical significance here. In any event, neither this Court nor any other to our knowledge has made this inquiry in any other than an embezzlement situation although it is difficult to see why the situation presented by *United States* v. *Lewis*, 340 U.S. 590, should not also follow *Wilcox* if there were any question of the taxpayer's inability to repay the employer and also pay the tax. Indeed there are numerous situations where the Government's tax lien defeats the recovery of honest claims against insolvent taxpayers even in situations where the taxable income directly arose from goods or services furnished by the ultimately disappointed creditor. These are questions of policy that can only be resolved by Congress. We see no room in the language, purpose, or prior interpretation of Section 22(a) to predicate its coverage on the basis of possible hardship to third parties. Certainly there is none in cases such as this where there is no hardship.

2. The criterion of the *Wilcox* opinion, discussed *supra*, that to have income there must be absent a definite, unconditional obligation to repay was undoubtedly motivated by the consideration that Wilcox was being held accountable to repay the embezzled sums and would probably in fact be required to repay to the extent of his financial ability. We have already shown that in *North American*

Oil the Court had no occasion to, and did not, impose such a requirement and that, in a practical sense, such requirement would be in derogation of the claim of right principle as outlined in that case and thereafter consistently applied. See *supra*, pp. 28-33. We have shown, too, that such a requirement would result in exempting many, if not most, illegal gains from taxation contrary to all the decisions. *Ibid.* But it was one thing to justify the *Wilcox* result on that basis since Wilcox was in fact being held accountable; it would be quite another, and as a practical matter unjustifiable, to conclude that petitioner had no income because there existed a theoretical cause of action by Reinfeld which in fact was not resorted to and as a matter of probability would not be resorted to. In any event no action for replevin or right to summary restoration by the magistrate existed here as it did in *Wilcox*, 327 U.S., p. 409. Indeed, the enormous record here, containing conflicting testimony covering twenty-five years of intricate business relationships, the formal release given Reinfeld by petitioner (Ex. D-8, R. 966a), and the evident perjury—which on the basis of the jury's verdict must have been committed by petitioner and in his behalf [17]—would make Reinfeld's task not only difficult and arduous but

[17] The trial court's charge referred to the evident perjury as follows (R. 925):

> That somebody lied and committed perjury is perfectly patent because contradictory stories have been told, and you must say where the truth lies; and the problem of determining that truth is solely and peculiarly yours.

uncertain in result. His remedy was anything but summary.[18]

Regardless, then, of the criminality involved, Reinfeld in fact had nothing but an uncertain civil remedy. On this aspect of the case, it is much more like *United States* v. *Lewis, supra,* with the perhaps immaterial but nevertheless real difference that Lewis in fact, under the state court's judgment, returned the income in controversy to his employer while petitioner was never even asked to make restitution. Thus, if income taxation is a practical matter, it is not possible to square petitioner's position with the result in *Lewis.* Lewis, an honest but mistaken man, received money and was compelled to return it. Petitioner, a dishonest man, received money and was not. On the practical level, if Lewis had income, as it was correctly held he had, petitioner, *a fortiori,* had income.

3. There is a third practical consideration already suggested that merits express attention.

The literal application of the *Wilcox* dicta, as urged by the petitioner will, as argued, *supra,* immunize from income tax many, if not most, receipts from illicit enterprise. Congress and the courts, now and in the past, have sought to discourage criminality by imposing additional sanctions on certain illegal enterprises in the form of special

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[18] If Reinfeld's cause of action were not now barred by limitations, his right might be easier to enforce in the light of the verdict in this case. But that is, of course, irrelevant.

or additional taxes[19] and the courts, on the basis of public policy, have denied income tax deductions to wrong-doers.[20] Regardless of the merits of these sanctions and this policy, we think there is no room for argument that it is contrary to the known Congressional policy and to public policy generally to discriminate in favor of the recipients of gain from illegal activity in the interpretation of the income tax provisions. There is no question here of taxing petitioner merely because the receipts were outside the law; the tax sought to be imposed is the same tax that would be due if he had honestly earned the same amount. To the extent that the dishonest are able to escape tax, the honest in the last analysis must pay the more. But equally important, to the extent that the criminal element is permitted to escape taxation, there is an additional incentive to criminality. Thus, whatever may be said in defense of discriminatory taxation to discourage criminal activity, there is certainly no defense for a result which makes the criminal the favorite of the tax law.

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[19] See, e.g., Internal Revenue Code, Section 23(h) (limitation on wagering losses); Section 471 of the Revenue Act of 1951, Public Law 183, 82d Cong., 1st Sess., adding Chapter 27A to the Internal Revenue Code (ten percent excise tax on wagering); see generally *Steinberg* v. *United States*, 14 F. 2d 564, 566-567 (C.A. 2d).

[20] See *Commissioner* v. *Heininger*, 320 U.S. 467, 473; *Textile Mills Corp* v. *Commissioner*, 314 U.S. 326, 338; *Lilly* v. *Commissioner*, 188 F. 2d 269 (C.A. 4th); certiorari granted October 8, 1951 (No. 158, this Term).

II

There Was No Prejudicial Error in the Charge to the Jury With Respect to Any Question Raised by the Petition for Certiorari

A. *The failure to grant petitioner's request to charge No. 29 was not prejudicial*

If, as we argue in part I, *supra*, pp. 18-40, extorted money is income, there was basically but one factual issue for the jury on the question whether the $250,000 petitioner admittedly received and did not report was income.[21] That issue, to which virtually the entire proof of both the petitioner and the United States was directed, was whether, as he contended, petitioner had the legal right to the money he received from Reinfeld because it derived from an interest in stock in Browne Vintners or whether, as the Government contended, he had no legal right to any money from Reinfeld, but obtained it through the assertion of a false claim and by threats.

Despite the fact that this was the only issue relating to whether the $250,000 was income as

[21] The other elements of the offense defined by Section 145 (b) in addition to unreported income, (1) an affirmative attempt to evade or defeat, and (2) wilfulness (*Spies* v. *United States*, 317 U.S. 492; *United States* v. *Schenck*, 126 F. 2d 702 (C.A. 2d); *Tinkoff* v. *United States*, 86 F. 2d 868 (C.A. 7th), certiorari denied, 301 U.S. 689; *Gleckman* v. *United States*, 80 F. 2d 394 (C.A. 8th), certiorari denied, 297 U.S. 709; *United States* v. *Miro*, 60 F. 2d 58 (C.A. 2d)), were without question properly charged (R. 922, 930) nor is any question raised of sufficiency of the evidence to support the verdict.

disclosed by the petitioner's opening statement, the evidence and the summation, petitioner asserts prejudicial error (Br. 36-39) in the trial court's refusal to charge the second sentence of his request No. 29. The second sentence of this request to charge [22] (R. 949) was "Even if you believe Rutkin made threats to Reinfeld and that these threats produced the money, if the money was in payment of Rutkin's interest in the Browne-Vintners stock, he should be acquitted." Petitioner contends that the refusal to make this charge was prejudicial error because without the substance of that charge the jury would reason on the basis of the instructions that (Pet. 18) "(1) threats mean extortion, (2) extortion results in taxable income not reported, (3) petitioner must be found guilty."

1. The short answer to this syllogism is that the major premise is false. There was no charge that "threats mean extortion." Petitioner, in a more objective moment, stated in his petition to this Court (p. 5) that the case went to the jury under instructions that petitioner should be found guilty if it believed the Government's contention which was in petitioner's own language that (Pet. 5) (1) "petitioner had no claim whatsoever in the proceeds of the sale of the Browne-Vintners

[22] It is not clear whether petitioner also contends that error resulted from failure to charge the first sentence of request No. 29, but, as pointed out, *infra*, p. 43, there can be no question that the substance of the first sentence (R. 949) was in fact given (R. 930).

stock;" (2) "his assertion of such claim was to his knowledge without any basis in fact * * *", and (3) "petitioner extorted the $250,000 from Reinfeld by threats to kill Reinfeld or his family * * *." Thus, by petitioner's own statement to this Court (Pet. 8), contrary to his present contention, the jury was instructed to find petitioner guilty only if it found that threats were made, and that petitioner had no right to the money.

Nor is there any question that petitioner's understanding of the issues and of the instructions as related in the petition (pp. 4-5) is correct. The court charged the jury *inter alia* that (R. 930)—

> Rutkin says that $250,000 was a final settlement of his claim in Browne Vintners, and if that is so—and the government does not contend that the capital gains tax was not paid—he would not be obliged to report that income.

It is apparent that by this statement the court accurately charged the petitioner's contention in language substantially similar to the first sentence of the request to charge No. 29. The next statement of the court's charge, reflecting the Government's position based on Reinfeld's testimony, was that (R. 930) "But Reinfeld says no, 'that was the result of extortion. He got that money out of me by threatening me and my family' * * *." Thus read in context, the charge clearly reflected petitioner's position that if it were the fact that he

had legal right to the $250,000 he was entitled to an acquittal, and, also, the Government's position that Reinfeld denied petitioner's legal right derived from an interest in Browne-Vintners but asserted that petitioner received the money by extortion carried out by threats.

No fair reading of the charge leaves any room for the conclusion that the jury was instructed to find petitioner guilty if he had a right to the money but used threats to collect it. The court's use of the word "extortion" was at all times in contradistinction of a legal right to the money. This is confirmed two sentences later by the further charge (R. 930), "If that money was *extorted and was paid as a result of threats*, then it was taxable income and Rutkin was under the duty of reporting that tax." (Italics supplied.)

2. But even assuming a latent ambiguity may be read into the court's charge considered as it appears from the cold printed page, it is entirely dissipated when considered, as it should be, in the context of the entire trial. "In reviewing criminal cases, it is particularly important for appellate courts to re-live the whole trial imaginatively and not to extract from episodes in isolation abstract questions of evidence and procedure." *Johnson* v. *United States*, 318 U.S. 189, 202 (Mr. Justice Frankfurter's concurring opinion); see also *United States* v. *Stilson*, 254 Fed. 120, 125 (E. D.

Pa.), affirmed on other grounds, 250 U.S. 583.[23] As previously stated the record established that there was no testimony of any kind that petitioner had the right to the money but used threats to collect it. The entire evidence was directed to proving or disproving right to the money on the one hand and no right, but merely threats, on the other.

Equally significant, neither the petitioner's opening statement[24] nor his summation[25] despite their great detail even remotely suggest as an alternative possibility that petitioner may have used threats to collect money rightfully his. Indeed the statement of petitioner's experienced trial attor-

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[23] The district court there stated (p. 125):

> With respect to the charge of the court, this observation is to be made: Every charge to the jury, which is a real charge, and not merely a colorless statement of the law and of the issues of fact involved, ought to reflect the real issue arising out of the evidence, and also as presented in the arguments addressed to the jury. It can never be rightly interpreted unless it is read in the atmosphere of the trial. If the parties, in presenting their cause, strip it of all formalities and technical distinctions, and get right down to the marrow of the case, and to a discussion of the substantial questions involved, it is not only helpful to the jury, but inevitable, that the charge should reflect the same spirit. There can never be applied to a charge under such circumstances the canons of criticism to which a treatise on the law of the case could properly be subjected. . . .

[24] Petitioner's opening statement was not a part of the record in the Court of Appeals, but a copy certified by the Clerk of the District Court is on file with the Clerk of this Court.

[25] The summations of both sides certified by the Clerk of the District Court have also been lodged with the Clerk of this Court.

ney almost at the outset of his two-hour summation was (Tr. 1452-6):

> Now, by saying that in his opening the District Attorney has narrowed the issue here very closely, very narrowly, *and so we can confine ourselves to that issue;* that is the issue. Did Rutkin receive $230,000 from Reinfeld *solely* as a result of threats. * * * (Italics supplied.)

3. There is yet another reason for rejecting petitioner's position. Rule 30, Federal Rules of Criminal Procedure, states:

> No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. * * *

Immediately after the trial judge completed the charge he stated in full compliance with the directive of Rule 30 (R. 935):

> The Court: I have tried only to give the general principles which are included in your requests to charge. The request to state the evidence I refuse to state in the manner requested except as I have covered it now. Hav [sic] you anything else to suggest?

The record (p. 935) then shows that despite the suggestion of petitioner's attorney that "exceptions for the record" be taken after the jury re-

tired, the court insisted, as Rule 30 requires, on hearing the objections at that point.

There followed the statement of a number of objections to the charge which the court corrected in the presence of the jury and apparently to counsel's satisfaction. The only reference to that part of the charge defining income was (R. 936): "I except to that part of your Honor's charge which says 'If the money was extorted it was taxable', purely on the legal proposition, of course." Counsel was plainly referring to the legal question in the case discussed in part I, *supra*, whether extorted funds are income, and was not objecting to the court's charge on the ground that the jury might believe that extortion encompassed the forceful taking of one's own money. Petitioner states as much at the beginning of his brief. Under the heading, "Is money secured by extortion taxable income * * *," there appears the following (Br. 28):

> By motions for judgment of acquittal (R315, R914, R954), *and by exceptions to the charge* (R936), trial counsel for petitioner promptly and clearly made known to the trial Court the contention that the income which is the subject of this indictment was not taxable under the decision of this Court in *Commissioner* v. *Wilcox*, 327 U.S. 404. The trial Court ruled that the *Wilcox* case was not applicable and denied the motions (R321, R322, R915, R916, R956). [Italics supplied.]

Moreover the exception shows that petitioner's attorney himself used the term extortion in the presence of the jury, as he had throughout the trial, in the same sense that the court used the term in the charge—as an unlawful taking of money or property not one's own by threats of violence.

Defense counsel expressly took exception to the court's refusal to charge requests Nos. 21 and 22 after which counsel thanked the court and the jury was given the case. (R. 937.) No specific exception was taken to the refusal to make charge No. 29 nor any of the other forty-five requests to charge except as already indicated, nor was charge No. 29 referred to in any manner.

Rule 30, which derives from Rule 51,[26] Federal Rules of Civil Procedure, has as its purpose to inform the trial judge of specific errors so that he may have an opportunity to correct them. *Palmer* v. *Hoffman,* 318 U.S. 109, 119-120; *Pennsylvania R. R. Co.* v. *Minds,* 250 U. S. 368, 372-375; *Beaver* v. *Taylor,* 93 U.S. 46, 55; *Lincoln* v. *Claflin,* 7 Wall. 132, 139; *Phelps* v. *Mayer,* 15 How. 160. This rule is dictated by public policy. It prevents new trials and unnecessary expense resulting from efforts to entrap the trial court with a lengthy list of requests to charge, perhaps technically correct but not in fact pressed. See generally Housel & Walser, *Defending and Prosecuting Federal*

---

[26] Note to the rule prepared by the Advisory Committee appointed by this Court.

Criminal Cases (2d ed., 1946), Secs. 512, 519; 5 Moore's *Federal Practice* (2d ed., 1951), par. 51.04. Under the circumstances of this case there should be no question that petitioner, having failed to comply with the rule, should not be allowed to predicate error on his own failure, especially since on assumptions most favorable to petitioner the point was at best of doubtful substance.

B. The trial court submitted to the jury, under proper instructions, all contested questions of fact necessary to determine whether petitioner had in ome

1. In point four of his brief (p. 36) petitioner asks the question, "May a Court of Appeals properly affirm a conviction upon a new finding of fact, when the trial jury was entirely uninstructed on the law to be applied to such finding?" Although the discussion is intertwined with unrelated issues (Br. 36-40), it appears that petitioner's complaint is that the Court of Appeals affirmed the conviction on the ground that (Br. 39) "petitioner had received the money with a 'semblance of a bona fide legal or equitable claim' " but that this theory was not presented to the jury.

The short answer to this contention is that our position was at all stages of the trial,[27] and still is—

[27] Petitioner quotes (Br. 28-29) the trial court's understanding, as of the close of the Government's case, of our position to this effect.

as pointed out in detail in part I, *supra*—that extorted funds are income.[28] Our position at no point turns on such enigmatic phrases as "semblance of a bona fide claim of right." See part I, *supra*.[29]

As explained *supra*, p. 41, the case went to the jury on instructions that petitioner could be convicted if the $250,000 was extorted. This was the only instruction necessary on the income issue. Although, as we have argued, extorted money is income because the petitioner claimed of right,

---

[28] It is immaterial if the court agrees with our position as to why the petitioner had income that the Court of Appeals reached the correct result by a different analysis. We do not wish to suggest, however, that the Court of Appeals' analysis was deficient as measured by the charge. It is plain that by "semblance of a bona fide claim of right" the court merely meant that, although false, petitioner asserted a colorable claim. (R. 997.) Since both parties agreed that Rutkin claimed the money as his, if as the jury found it was not an honest claim, it must have concluded that it was a spurious one. Instructions were neither asked for nor were necessary on a point not controverted. Accordingly, a new trial is not required should the Court approve the reasoning of the Court of Appeals.

[29] Petitioner also contends (Br. 40) that the jury was not properly charged on the element of wilfulness if the Court of Appeals' hypothesis is accepted that petitioner had income because he had a semblance of a bona fide claim of right. Petitioner's position is based on his assumption (p. 40) that "Any semblance of a bona fide claim of right * * * could arise only from his having had, in his own mind at least, a right to a derivative share of the proceeds of the sale of the Browne-Vintners Co., Inc." But the Court of Appeals did not use the phrase in petitioner's subjective sense (see footnote 28, *supra*), and in any event, as shown, the Government has at all times contended that "claim of right" is the objective manifestation of an intention to hold the money as one's own regardless of subjective honesty or dishonesty. For reasons already stated in detail there can be no question that the charge properly reflected our theory.

there was no "claim of right" issue for the jury. For once it was determined, as the jury did determine, that petitioner in fact had no right to the money but secured it solely by threats, the undisputed circumstances of this case permit the legal conclusion that petitioner claimed of right—i.e., adversely. No question was raised nor could be raised on the basis of any evidence presented that petitioner did not hold adversely to Reinfeld. An instruction with reference to claim of right in the *North American* sense with which we use it, would have served no useful purpose and might very well have confused the jury in the context of the particular factual controversy that existed.[30]

III

Petitioner's Points Six to Nine, Inclusive, Were Not Presented in the Petition and Are Accordingly Not Open to Him Now, but in Any Event They Are Without Merit

In parts I and II of this Argument, *supra,* we have discussed every question raised by the petition and the brief in support of the petition. In part I, we have discussed the first four "Questions Presented" in the petition (pp. 5-6), all relating to whether extorted money is income. In part II, we have discussed the fifth question of the

[30] Just as courts have mistakenly but understandably confused claim of right with an actual legal or equitable right, it should be expected that a jury instructed to find petitioner innocent if he had a right but to find him guilty if he in fact had no right, knew that he had none but claimed of right, would be hopelessly confused.

petition which, as disclosed by the brief in support of the petition (pp. 16-19), related to petitioner's request to charge No. 29 and the contention that the jury was otherwise not properly instructed on the income issue.

Despite the presentation of only those issues in his petition, petitioner devotes twenty-four pages of his brief (44-65) to the argument of four additional questions as follows:

> 1. The trial court committed prejudicial error in charging the "false in one, false in all" maxim. (Br. 44-54.)
>
> 2. The trial court's charge erroneously impaired the petitioner's testimony. (Br. 54-59.)
>
> 3. The trial court erred in impugning the testimony of important witnesses for the defense. (Br. 59-61.)
>
> 4. The charge of the trial court was argumentative and one-sided. (Br. 40-43, 61-65.)

Under the rules and decisions of this Court, it is plain that certiorari was only granted to review questions which the petition disclosed, and only those questions are to be considered. Rule 38, par. 2, Rules of this Court; *General Pictures Co.* v. *Electric Co.*, 304 U.S. 175, 177-178, 179; *Nat. Licorice Co.* v. *Labor Board*, 309 U.S. 350, 357; *Connecticut Ry. Co.* v. *Palmer*, 305 U.S. 493, 496-497; *Johnson* v. *Manhattan Ry. Co.*, 289 U.S. 479, 494.

Both because of the Court's firmly entrenched practice and the utter lack of merit in these addi-

tional contentions, we believe that no useful purpose would be served in a detailed treatment of them. Moreover, since they are in any event fully and ably discussed in the opinion of the Court of Appeals (R. 1001-1007), additional discussion here would be unduly repetitious.

CONCLUSION

The decision of the Court of Appeals is correct and should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 195.

JAMES RUTKIN,

Petitioner,

vs:

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR REHEARING.

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PETITION FOR REHEARING.

Your petitioner, through his counsel, respectfully requests a rehearing for the following reasons:

POINT I.

The charge of the trial court did not properly present to the jury the elements of the crime charged in the indictment.

The indictment herein contained a single count charging Rutkin with willfully and knowingly attempting to defeat and evade a large part of his income tax for the year 1943 in violation of Title 26, U. S. Code, Section 145b (R. 5). Throughout the trial it was conceded that Rutkin received $250,000.00 in 1943. It was also conceded that if defendant received money as payment for his interest in Browne-

Vintners he was under no obligation to report it in his return or pay taxes thereon since the tax had been paid. This being the case, the jury had to find, first, that Rutkin had no claim or semblance of claim whatsoever to the proceeds of sale of Browne-Vintners, and second, that having obtained $250,000.00 by holding up Reinfeld with a gun, he willfully and knowingly attempted to defeat payment of the tax.

Throughout the trial all witnesses except Reinfeld and Holtz stated that Rutkin at all times asserted that he had a bona fide claim to the $250,000.00. In fact, the United States Court of Appeals for the Third Circuit based its conclusion on the supposition that there was a claim of right by Rutkin to some part of the proceeds of sale of Browne-Vintners. Only Reinfeld and Holtz testified that Rutkin made threats. Thus from all the evidence in the case the jury could have found any of the following:

1. That Rutkin had no interest in Browne-Vintners, knew he had none, held Reinfeld up with a gun five months before the payment was made (R. 41), and placed the proceeds of the holdup in a safe deposit box in order to avoid taxation.

2. That Rutkin had no interest in Browne-Vintners, but had an honest belief that he had an interest, enforced that belief with a gun and placed the proceeds in a safe deposit box believing that the taxes had been paid thereon.

3. That Rutkin had an interest in Browne-Vintners, had collected his share with the aid of a gun, and had placed the proceeds in a safe deposit box, believing that taxes had been paid thereon.

4. That Rutkin received his share of the proceeds of the sale of Browne-Vintners rightfully, without any threats, and had placed the proceeds in a safe deposit box believing that the taxes had been paid thereon.

5. That Rutkin obtained the money by threats, knew he was not entitled to it, but did not believe it was taxable.

The statute under which Rutkin was indicted would permit conviction only if the jury found the facts to be as set forth in the first hypothesis. *Spies* v. *United States*, 317 U. S. 492 (1942). Section 145 b of the Internal Revenue Code, 26 U. S. C. 1946 ed. Sec. 145, requires, first, the non-payment of tax, and second, a willful and knowing attempt to defeat and evade payment. If the jury found the facts to be as set forth in any of the hypotheses numbered 2 through 5, Rutkin was not guilty because the necessary willfulness was not present.

Did the charge properly limit the jury to the first hypothesis? Consider it in the light of some 880 pages of inflammatory testimony in which Rutkin was tried for bootlegging, extortion, gambling, prostituting justice (R. 927), supergovernment (R. 934) and scoundrelism (R. 927). In a charge covering fourteen pages of record, what did the Court say on this crucial issue in the case? Twenty-five lines (R. 922) refer to the requirement of willfulness, defining the term in generalities and by use of synonyms. Nothing in this language sufficiently restricts the jury. Later the Court deals with the question of willfulness more specifically (R. 930):

> "If that money was extorted and was paid as a result of threats, then it was taxable income and Rutkin (1465) was under the duty of reporting that tax. But as I indicated to you before, the mere failure to report it doesn't satisfy the requirements

> of the law with regard to the violation of this statute, there must be something else which will indicate the willful intent to defeat and evade the tax. You may consider other elements that appear in the evidence, the fact that this money was paid over in cash; that no record of any kind was made of the receipt of that money; that the money was split and $100,000 of it sent to the sister-in-law of the defendant to be placed in her vault or "wault" as it has been called here, and that the other $150,000 was placed in the defendant's own vault. You may consider these as factors surrounding the whole transaction."

Does this part of the charge properly restrict the jury? In the light of the evidence it would allow the jury to return a guilty verdict based on hypotheses 2, 3 and 5 as well as hypothesis 1.

Furthermore, pointing to the "other elements" the Court instructed that the jury could find willfulness from the fact that the money was received in cash. The undisputed testimony was to the effect that there was no request for a cash payment by any of the recipients. In fact payment by check was requested (R. 478), and the money was paid in cash because Reinfeld, the chief government witness, kept the proceeds of the sale of Browne-Vintner in a vault in Newark (R. 206). Thus the Court instructed that the Jury could find willfulness on Rutkin's part from the fact that someone else desired to transact business in cash. Nowhere in the record is there any evidence that Rutkin requested payment in cash.

Note further that the Court told the jury that no record of any kind was made of the receipt of the money (R. 930). The undisputed testimony was that a release had been signed by Zwillman, Stacher and Rutkin, and witnessed by several attorneys (R. 480, R. 967, Exhibit D-8). While the

trial Judge may analyze and dissect evidence, he may not in this fashion distort it or add to it. *Quercia* v. *United States*, 289 U. S. 446 (1932).

The charge continues as follows:

> "Rutkin says that he kept no books; kept no books at that time nor at any other time; kept no books when he received his profit, sixty, seventy, eighty thousand dollars a year, I think it was, from the bootlegging, and admits that he paid no tax; kept no books when he got this $250,000. These are all things that you may consider as circumstances surrounding the whole procedure."

This part of the charge was excepted to (R. 936), but the Court merely added that it showed a course of conduct indicating an attempt to evade the tax in question (R. 936). Was Rutkin tried for evading taxes in the bootlegging days?

Speaking of the presence of the attorneys, the Court said (R. 931):

> "The payment of $250,000 was made in the presence of other people, these people being Zwillman, as I recall it, Stacher who were there with Rutkin and the lawyers. Well, neither the lawyers nor any of these people, it seems to me, would be inclined to go out and publish it."

Thus on the vital issue of willfulness, we find the Court pointing to the fact that lawyers representing persons other than the defendant would be likely to keep quiet is a circumstance from which the jury can find that the defendant willfully attempted to evade his tax. This part of the charge was duly excepted to (R. 936).

Compare the argumentative charge of the Court with the defendant's requests to charge (Nos. 28 and 29, R. 948, R. 949) on the issue of willfulness. Had the Court charged

as requested, it would have been perfectly clear to the jury that conviction could be based only upon hypothesis No. 1. Instead, we find the judge combing the record for some slight evidence of willfulness. This, despite the fact that of the witnesses present when the agreement to pay $250,000.00 was reached, and when the money was paid, all but Louis Holtz, a relative and employee of Reinfeld, gave testimony tending to corroborate Butkin's version of the transaction. Yet the Court ignored the testimony of reputable members of the bar (Kessler and Mehler), refused to charge as requested in defendant's requests to charge numbered 22 through 27 (R. 946-948), and told the jury that Reinfeld's testimony had been corroborated (R. 930). Add to this the fact that the Court by its characterization had previously destroyed the probative value of two important corroborative defense witnesses (R. 503).

The charge was so confusing and argumentative and the testimony so inflammatory and misleading that no one can say what the jury found the facts to be. In a trial for willfully evading payment of income tax, it is of the greatest importance to a just and fair trial that the defendant be protected from prejudice arising out of other matters not germane to the trial and that his defenses be fully and fairly submitted to the jury. It is particularly important that he be tried, not for being an unworthy character, but upon specific instructions applicable to the law and the facts of the case. E.g., *Jones* v. *United States,* 164 F. 2d 398, 399 (5th Cir., 1947). What further proof do we need of confusion of issues than that this Court and the Third Circuit Court of Appeals based their conclusions on different factual hypotheses.

But conviction cannot be based on any finding except that assumed by this Court if *Spies* vs. *United States,*

supra, is still the law. Can this Court say that on this record the jury could not possibly have concluded as did the Third Circuit?

To add to the confusion the Court nowhere in its charge defines the term extortion. After setting up a clear dichotomy between money lawfully obtained and money extorted (R. 930), the Court stated that the latter was taxable, but left it to the jury to determine the exact content of the term. In New Jersey there are four crimes of extortion (R. S. 2:127-1, 2, 3 and 4; R. S. 2A:105-1, 2, 3 and 4). They range from bribe taking (R. S. 2:127-1), to sending threatening letters (R. S. 2:127-3). The federal statute defines extortion as, ". . . the obtaining property from another with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right." 18 U. S. C. Section 1951 (b) (2). At common law the crime of extortion could be committed only by a public officer. *Kirby* v. *State*, 57 N. J. L. 320, 31 Atl. 213 (S. Ct. 1894). Where the crime has been enlarged by statute most states hold that it is committed even though the defendant had a bona fide claim to the money obtained by threats. E.g., *Commonwealth* v. *Coolidge*, 128 Mass. 55 (1879); *contra, State* v. *Rick*, 108 Miss. 7, 66 So. 281 (1914). Thus it is not only doubtful whether the extortion was a state or federal crime; it is even more doubtful whether the jury had the slightest notion what extortion meant. If the court meant the extortion of the New Jersey statute, then it probably charged as a matter of law, that Rutkin was guilty of willful evasion of his tax even if he had a bona fide claim to the $250,000.00. 1 Burdick, Law of Crimes, 404. At least the question has never been determined in New Jersey.

The government in its brief has made the point (page 46), that if there were errors below the defendant

did not properly except to them. The record will not support this contention. We have pointed out instances of specific exceptions to parts of the charge. It is obvious that counsel below were under the impression, before the jury retired, that they had properly excepted to the court's refusal to charge as requested (R. 939, 955). But even if the errors were not excepted to this Court can and should notice plain errors and defects affecting substantial rights. Federal Rules of Criminal Procedure, Rule 52b. Failure of the trial judge to make clear to the jury the issues involved in the trial and the essential elements of the crime was reversible error even if defendants did not except or request a correct charge. E.g., *United States* v. *Balodimas*, 177 F. 2d 485 (7 Cir. 1949); *United States* v. *Raub*, 177 F. 2d 312 (7 Cir. 1949).

POINT II.

The defendant should not be convicted for willfully evading the payment of tax on income which did not become taxable until the decision in this case.

The majority opinion of this Court assumes that petitioner had no basis for his claim to the $250,000, and goes on to decide for the first time that the proceeds of extortion constitute income taxable to the extortioner in the year in which they were received. While the Court attempts to restrict *Commissioner* v. *Wilcox*, 327 U. S. 404 (1945) to its facts, in fact that case is overruled. For the first time money obtained without any bona fide legal or equitable claim constitutes returnable income. While there may be sufficient justification for the assessment of the tax, it is quite another matter to convict a man of willfully evading payment when he could well have a reasonable doubt as to

the taxability of the money. If defendant is to be tried for a crime involving willfulness he should have an opportunity to present to the jury all the circumstances surrounding his acts or omissions, including the circumstance that he could not have foreseen the decision in this case. In *United States* vs. *Murdock*, 290 U. S. 392, 396 (1933) this Court said:

> "It follows that the respondent was entitled to the charge he requested with respect to his good faith and actual belief. Not until this court pronounced judgment in United States *v.* Murdock, 284 U. S. 141, 76 L. ed. 210, 52 S. Ct. 63, 82 A. L. R. 1376, had it been definitely settled that one under examination in a federal tribunal could not refuse to answer on account of probable incrimination under state law. The question was involved but not decided in Ballman *v.* Fagin, 200 U. S. 186, 195, 50 L. ed. 433, 437, 26 S. Ct. 212, and specifically reserved in United States *ex rel.* Vajtauer *v.* Commissioner of Immigration, 273 U. S. 103, 113, 71 L. ed. 560, 566, 47 S. Ct. 302. The trial court could not, therefore, properly tell the jury the defendant's assertion of the privilege was so unreasonable and ill founded as to exhibit bad faith and establish willful wrongdoing."

The same reasoning is applicable to this case.

POINT III.

The Court's charge was prejudicial to the defendant, argumentative and one sided.

In addition to the fact that the jury was not properly instructed on the issue of willfulness, the rights of defendant were prejudiced by the last part of the charge, which contained a vast amount of inflammatory matter having noth-

ing whatsoever to do with the case. The charge (R. 933-934) reads as follows:

"But as you do that you must remember the other party to the controversy, the United States of America. Now, the United States of America is not just some far off idea or some distant concept. The United States of America is you and I and about one hundred and forty-five or one hundred and fifty million of our fellow-citizens who are banded together under law, trying to live in peace and comity with ourselves and with the rest of the world; trying desperately to make this America what so many men have suffered and died to make it; the land where justice exists; the land where honesty and decency is represented; where we have selected the government; where we won't be governed by any super-government, by any deleterious influences, but where we will be governed under our principles of freedom by the men and women that we select to govern us and that we hope will live up to the sacredness of their oath of service, although you have had a sample here where that is not quite true. But under God that is what we are aiming at. We are aiming at freedom and truth and justice.

And so the people of the United States have their rights too and those rights must be guarded just as jealously as the rights which you guard jealously for James Rutkin. The Government of the United States doesn't ask you to sacrifice anybody to prove its might. It asks you to do justice. That's all that Rutkin has a right to ask you to do, and that's what the Government of the United States asks you to do. It asks you to remember its rights too, remembering that unpunished crime, undetected crime, are threats to the majesty and dignity of our government; and that unpunished crime undermines our government. We all of us must do that which is

> our duty and do it without fear or favor. And so, keeping the balance between the two parties to this suit, the United States of America and James Rutkin, do justice between them. And I know of no better way in which to recall to you that which you must do than to recall the words of your oath, 'a true verdict to render according to the evidence, so help you God'. And if you do that, no one may quarrel with your verdict."

Petitioner was not on trial for being part of a "supergovernment", or for the commission of other "undetected" and "unpunished" crime. But the court gave the jury the option of punishing Rutkin for his bootlegging offenses, his gambling, or perhaps his almost simultaneous appearance before the Senate Crime Investigating Committee. The quoted words were not a reference to the crime of income tax evasion. That was not undetected. It had not even been hidden. Obviously, that crime had nothing to do with the underworld of bootleggers and gamblers to which the court must have been referring when it spoke of "supergovernment".

Conclusion.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted, and that the judgment of the Third Circuit Court of Appeals be reversed and a trial granted.

Respectfully submitted,

EDWARD HALLE,
Counsel for Petitioner,
225 Broadway,
New York City.

Dated: April 17, 1952.

Certificate of Counsel.

I, EDWARD HALLE, Esq., counsel for the above named petitioner, do hereby certify that the foregoing petition for the rehearing of this case is presented in good faith and not for delay.

EDWARD HALLE,
Counsel for James Rutkin, Petitioner.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

MOTION TO STAY ISSUANCE OF MANDATE.

The petitioner, James Rutkin, moves the Court that the mandate be stayed until the Court renders a decision on his petition for rehearing for the following reasons:

1. Petitioner, through his counsel, requested an enlargement of the time for filing a petition for rehearing and Mr. Justice Burton granted an additional fifteen days which expires on April 23, 1952. Counsel has prepared the peti-

tion for rehearing and it will be filed together with this petition.

2. There is now pending in the United States District Court for the Southern District of New York an action in contract for $22,000,000.00 in which petitioner is the plaintiff, entitled James Rutkin, plaintiff against Joseph Reinfeld, Samuel Bronfman, Abraham Bronfman, Harry Bronfman and Alan Bronfman, individually, and as co-partners doing business under the style and name of Bronfman Interests and Distillers Corporation—Seagrams Ltd., Defendants, Civil Action No. 46-509. Many of the same issues are involved in the civil action as were involved in the criminal action against petitioner. That suit is set down for pretrial conference on the 18th day of April, 1952, and petitioner is informed by counsel in that case that it will be reached for trial during May or June of 1952. The Petitioner's continued liberty is essential to the adequate preparation of the civil action. Furthermore, Petitioner must be present at the trial because much of the case depends on his testimony.

3. In the civil action a supplemental complaint had been issued charging defendants with conspiracy to cause petitioner to be indicted for income tax evasion and asking additional damages of $500,000.00. The indictment in question is the one upon which petitioner has been convicted and which is presently before this court. Discovery proceedings in the civil action have produced evidence which has given leads to additional evidence which counsel for petitioner believes will prove the existence of the conspiracy. Petitioner now knows that the affidavit of Joseph Reinfeld which was presented to the Grand Jury which indicted him

was dictated on or about December 12, 1949, in the office of Theodore Kiendl, Esq. of the firm of Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., attorneys for Joseph Reinfeld in the civil action, following a conference between Kiendl and an attorney from the office of Arthur Garfield Hays, representing Abner Zwillmn. He now knows that on April 12, 1950 Charles Tyne, Esq. the assistant United States Attorney who tried the criminal case, attended a conference in Mr. Kiendl's office at which Reinfeld was present. He now knows that Joseph Nunan, Esq., former Commissioner of Internal Revenue was retained by Reinfeld through some of Reinfeld's corporations while the civil suit was pending in New York. Mr. Nunan once warned petitioner that he would be indicted if he did not settle the civil suit. In January of 1952, more than a year after the trial of the Criminal Case, Joseph Reinfeld testified in the pretrial discovery proceedings in the New York suit that of the $385,000.00 which was paid to Zwillman and Stacher, only $133,000.00 came directly from Browne-Vintners and the balance came from Reinfeld's safe deposit vaults; the same vaults from which Rutkin's $250,000.00 was taken. This contradicts his testimony at the criminal trial. Petitioner's continued liberty is essential in order that he may aid counsel in tracking down certain other evidence presently no available.

4. Since the opinion was handed down by this Court, petitioner has learned of the existence of a new witness, Joseph A. Frayne, a former government officer, honorably retired, and of unimpeachable reputation. This witness can give evidence tending to show that Reinfeld, the principal government witness, perjured himself at the criminal trial, and that Holtz, the only corroborative witness also

perjured himself. This evidence was unknown to petitioner at the time of the trial. Petitioner learned for the first time on March 27, 1952, of the nature of the testimony the witness could give. An affidavit has been taken for the purpose of moving for a new trial on the basis of newly discovered evidence.

5. In addition to his own testimony the new witness gave petitioner substantial leads to further evidence which may be uncovered by diligent inquiry. The continued liberty of petitioner is essential in order that this new evidence be uncovered.

6. Although petitioner is prepared to move for a new trial in the United States District Court for the District of New Jersey on the grounds of newly discovered evidence, he feels that the trial court will be reluctant to decide his motion while the petition for rehearing is pending before this court. A petition for new trial on the basis of newly discovered evidence cannot be granted while the case is pending on appeal. Federal Rules of Criminal Procedure, Rule 30.

7. Petitioner asserts that there is substantial merit to petitioner's request for rehearing and counsel informs him that they believe that the court will grant a rehearing and a new trial. In the interest of orderly procedure it is respectfully submitted that the mandate should be stayed until the petition for rehearing is granted or denied.

WHEREFORE, petitioner moves this Court that the issuance of the mandate of this court in the above entitled cause be stayed pending the determination of the petition for rehearing,

AND HE FURTHER, moves this court that if the petition for rehearing is granted, the mandate be stayed until such time as there is a final determination in the matter.

JAMES RUTKIN,
Petitioner.

James Rutkin has read the foregoing motion and all matters and things therein contained are true to the best of his knowledge and belief.

JAMES RUTKIN,
Petitioner.

Subscribed and sworn to at Newark, New Jersey the 17th day of April, 1952.

JOSEPHINE G. LA MALFA
Notary Public of New Jersey
My Commission expires Aug. 30, 1956

The undersigned counsel for petitioner hereby certifies that the foregoing motion for stay of mandate is made in good faith and not for purpose of delay.

EDWARD HALLE,
Counsel for Petitioner.